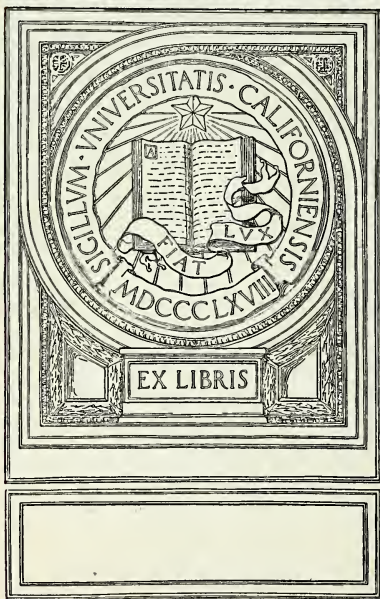


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HISTORY
OF THE
JUDICIARY OF MASSACHUSETTS

INCLUDING THE PLYMOUTH AND MASSACHUSETTS COLONIES,
THE PROVINCE OF THE MASSACHUSETTS BAY, AND
THE COMMONWEALTH

BY

WILLIAM T. DAVIS

AUTHOR OF "ANCIENT LANDMARKS OF PLYMOUTH," "HISTORY OF
PLYMOUTH," "HISTORY OF NEWBURYPORT AND OTHER
TOWNS," AND "HISTORY OF THE BENCH
AND BAR OF MASSACHUSETTS"

THE BOSTON BOOK COMPANY

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POLITICAL SCIENCE

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PREFACE.

In the preparation of this work I have gathered fragments before published by me, and woven them with new material into a continuous narrative. I have ventured to add, with some doubts of its pertinence, an introductory chapter, reminiscent in character, which I hope may not be without interest.

Judge Emory Washburn published in 1840 a Judicial History of Massachusetts, omitting the judiciary of the Plymouth Colony and of the Commonwealth, the seed and flower of the Massachusetts judicial system, and limiting the scope of his investigations to the Colony and Province of Massachusetts Bay. The present work includes not only the material thus omitted by him, but also much new material within the field covered by his valuable history.

The Great Charter of New England, the Patent issued by the Council for New England to the Plymouth Colony in 1621, the Patent issued by the Council to the Plymouth Colony in 1629, the Charter of the Massachusetts Colony, the Charter of the Province of Massachusetts Bay and the Charter explanatory of the same, are placed in an Appendix, where, while convenient for reference, they will not disturb the current of the historical narrative.

While I shall be held justly responsible for some of the imperfections, which will doubtless be found in my work, there are others for which defective records are alone accountable.

WM. T. DAVIS.

Plymouth, Mass.,
August 1, 1900.

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INTRODUCTORY CHAPTER.

As a member of the bar, though not in active practice, I have been more or less familiar with the courts for more than fifty years, and with some of their customs for a much longer period. A few reminiscences may not be out of place as introductory to a judicial history. Some of the outward signs and insignia of the courts have disappeared, and much of that sacred halo, which once surrounded them, like the "divinity which doth hedge a king," has gone forever. My ideal judge in those early days was a man with a rotund figure, full cheeks, florid complexion and gray hair or a bald head, who carried the atmosphere of the bench into everyday life. The Sheriff was the first gentleman in his county, and appointed by the Governor, and he awed the populace of the shire, when, bearing his staff of office, he escorted the Judges to and from the sessions of the court. The courthouse bell, which once rang out its "Liar, liar come to court," is no longer heard, and with the school bell and funeral bell has lost the use of its tongue, to be perhaps followed in its silence by that of the church bells themselves in some near time, when only the factory bells will be heard in the land.

I recall the Supreme Judicial Court, when Chief Justice Lemuel Shaw, Samuel Putnam, Samuel Sumner Wilde, Marcus Morton, Sr., Charles Augustus Dewey and Samuel Hubbard sat on its bench, and no more learned and incorruptible court ever sat in Massachusetts or elsewhere. The Chief Justice was the incarnation of law and justice, and it was impossible to imagine him swayed by prejudice or popular clamor. He was obedient only to the dictates of an unerring judicial mind.

I recall also the Court of Common Pleas, when its bench was occupied by Chief Justice Artemas Ward, John Mason

Williams, Solomon Strong, David Cummins, Charles Henry Warren, Charles Allen and Pliny Merrick, most of whom might have been transferred to the higher court without abating its dignity or learning.

I have seen engaged in the trial of causes, Daniel Webster, Rufus Choate, James Trecothick Austin, Franklin Dexter, William H. Gardner, Charles Greeley Loring, Sidney Bartlett, Benjamin R. Curtis, George S. Hillard, William Whiting, Richard H. Dana, Henry H. Fuller, Gustavus A. Somerby and Tolman Willey of the Suffolk bar; Nathaniel J. and Otis P. Lord and Robert Rantoul of the Essex bar; Samuel Hoar, Josiah G. Abbott, Benjamin F. Butler, Theodore H. Sweetser and George F. Farley of the Middlesex bar; Pliny Merrick and Benjamin F. Thomas of the Worcester bar; Ezra Wilkinson and Ellis Ames of the Norfolk bar; John H. Clifford, Thomas Dawes Eliot and Timothy G. Coffin of the Bristol bar, and William Baylies, Zachariah Eddy and Thomas Prince Beal of the Plymouth bar, and I distinctly recall the personal and mental traits which distinguished them. Concerning each an interesting story might be told, but a special reference to a few of them must suffice.

Though, to the best of my recollection, I have heard Mr. Webster make eleven speeches, only on one occasion have I heard him before a jury. He was not, as many who have never heard him, suppose, a fluent speaker. A fluent man is rarely, if ever, concise, but Mr. Webster's sentences were composed of selected words, and always compactly framed. He would in extemporaneous speech often hesitate, and he had a little trick of scratching his right ear until the word he wanted came to his tongue. Like the skilful workman, who, not content with the stones lying near to his hand, turns them over and selects one which will best fit the place in the wall which he wants to fill, he picked out from the entire vocabulary the word which expressed his meaning, and thus made his sentences the best examples of rhetorical art.

Mr. Webster in speaking always stood square upon his

feet, and neither Powers, the sculptor of the statue in the Massachusetts State House yard, nor the sculptor of the statue recently dedicated in Washington, would have represented him with one knee bent if he had ever seen him on his legs. There is a statue or statuette by Thomas Ball which shows the attitude in which he invariably stood.

The occasion, to which I have referred, when I heard him before a jury, was only two or three years before his death, and was his last appearance in a Boston court. The case on trial was a patent case, in which Mr. Choate was the leading counsel on the other side. I remember the playful mood in which during the trial he occasionally indulged. Mr. Choate, after finishing his address to the jury, left the court room for a minute or two during a short recess, and in his absence Mr. Webster took the sheets of his brief covered with that hieroglyphic writing, which no one but Mr. Choate himself could read, and which even he often found illegible after it had got cold, as he once said, and walking majestically across the bar distributed them among the ladies who had crowded the seats behind the rail to hear the thunder and witness the lightning of those wonderful men.

One secret of Mr. Choate's marvelous success as an advocate lay in his personal magnetism. His fine presence, his sympathetic heart, his tender nature, unruffled temper and winning voice and smile were never failing auxiliaries to his eloquence and logic; and I never went into the court room where he was trying a case without having my sympathies at once enlisted on his side. There is no reason to doubt that the same mysterious influence which acted on me acted also on the jury. It is probable that his greatest triumph as a criminal lawyer was the acquittal of Albert J. Tirrell, indicted for murder, on the ground of somnambulism. The defense was novel and ingenious, but added little to his fame; was well enough perhaps for once, but could be no more offered a second time than the defense in a recent novel that a man supposed to have been murdered was killed by a meteoric stone.

Perhaps the next most important criminal trial in which Mr. Choate was engaged was that of a master of a vessel charged with barratry on the coast of St. Domingo. In this trial an incident occurred under my observation showing his knowledge of human nature and of the susceptibility of the human heart to emotions as the result of causes of the most trivial kind. The case had been tried once with Robert Rantoul as United States Attorney, and the jury had disagreed. Before the second trial, under a new national administration, George Lunt had been appointed Attorney, and Mr. George Dwight Guild, a lawyer then recently admitted to the bar, was sent to St. Domingo to secure additional evidence for the government. The insurance companies had suffered severely from such fraudulent acts as that with which the defendant was charged, and the second trial was entered upon with an apparent certainty of conviction. After the evidence had all been put in and the defendant's case seemed desperate, a short recess was had, during which Mr. Choate in going through the lobby passed a group of sailors of which the colored cook of the wrecked vessel was one, and overheard him say that the Captain cried when he abandoned his vessel. At the close of the recess Mr. Choate stated to the court that an important piece of evidence had just come to his knowledge, and asked permission to put it in. Mr. Lunt objected, but the court assented, and the cook was called to the stand. The cook then testified that when the Captain left his vessel he cried like a child. This was enough for Mr. Choate, and in his address he pictured the Captain in such a pathetic manner, showing the improbability of a guilty destruction of the vessel by a man who exhibited so much distress at her loss, that the jury returned a verdict of not guilty.

Henry H. Fuller was an interesting figure at the Boston bar, and his addresses to the jury were so full of humor and sarcasm, that when it was known in Court street that he was about to speak the students and younger lawyers flocked to hear him. His appearance in the street with his spencer, one

of the last worn in Boston, suggested his humorous disposition. He was a sound lawyer, but when he found that the law would not help his case, he resorted to ridicule and sarcasm, and so surrounded the facts with an atmosphere of wit as to make them only visible through a distorted medium. In trying a case with Samuel Hoar the opposing counsel, he exhibited his peculiar traits in a marked degree. Mr. Hoar was a man distinguished for his dignity, conscientiousness and integrity, and also for a most serious and sober delivery, which often made a strong impression on juries. This was all very well in his own county among the farmers and mechanics of Middlesex, who knew him, and who believed that Squire Hoar always uttered the true law and gospel, but with a Boston jury it was different, and on this occasion, after he had finished a characteristic speech to the jury, Mr. Fuller rose and said in a drawling, melancholy tone, "May it please your Honor and you, Gentlemen of the Jury, let us close the exercises on this solemn occasion with a prayerful examination of the evidence in the case." From that moment the impression made by Mr. Hoar's serious speech was gone, and only his manner remained in the minds of the jurors to excite an occasional smile as their memory recalled it.

George Frederick Farley of Groton appeared occasionally in the Boston courts, and indeed from 1852 until his death in 1856 he was a member of the Suffolk bar. Few abler jury lawyers have ever appeared in Massachusetts. A graduate of Harvard in the class of 1816, admitted to the Middlesex bar in 1820, he practiced until 1832 in New Ipswich, N. H., and then removed to Groton, Mass., where he remained until he opened an office in Boston in 1852. His training at the New Hampshire bar prepared him for the rough and tumble of professional life, and his Middlesex practice gave him opportunities to measure his strength with the legal gladiators of an arena in which hard blows were expected to be given and taken. A master of the law, he was also a master of invective and ridicule, and a trembling hand, with which nature had endowed him lent impressive-

ness to his speech. He spared neither witness nor opposing counsel. He would in humorous and sarcastic words refer to some peculiarity of habit or speech of his antagonist and so fix it in the minds of the jury that while he in turn was addressing them their attention was diverted from his argument to the peculiarity which had been adverted to. On one occasion Tolman Willey was to follow him in addressing the jury, a man who could utter more words in a minute than any other lawyer I have known except perhaps John C. Park. Farley compared him with Demosthenes and Cicero, to whom, however, he was superior, because those distinguished orators occasionally hesitated in speech. While Willey was addressing the jury their minds were more intent on counting his words than on his argument and they gave Farley a verdict.

There was an implacable warfare between Mr. Farley and John P. Robinson. Judge Abbott, told me that Robinson came into his office one morning wringing his hands in great glee, and said, "Great times in hell this morning, Judge, Farley died last night."

Mr. Willey, above referred to, had other marked traits besides rapidity of speech. He was an able and indefatigable lawyer, and sometimes in his remarks in court would go to the verge of propriety. An illustration of this once occurred in my presence. He was trying a case before Chief Justice Daniel Wells of the old Common Pleas Court, in which his success depended on the exclusion of a certain fact, the appearance of which in evidence would be fatal to him. In this exclusion, so far as the examination of witnesses by either counsel was concerned, he was successful, but as the last witness was leaving the stand Judge Wells called him back and asked him a question, which drew out the fatal fact. Willey realizing that his case was lost, rose from his chair and looking around said, "Is there any other gentleman in the court room who would like to ask this witness a question?"

He was a man of quaint humor too. On one occasion he

defended a man on the ground of insanity. The jury brought in a verdict of guilty, but no one in court from the Judge down had any doubt of the insanity of the prisoner. When the verdict was rendered the Judge, who was astonished at it, said, "Have you anything to say, Mr. Willey?" "Your Honor," said Mr. Willey, "my client, an insane man, has exercised his constitutional right to be tried by his *peers*, and as they have declared him guilty, I don't think I have anything to say."

Referring to the question asked of the witness by Judge Wells, once when Jeremiah Mason encountered the same interference from the bench, he stopped the witness before he could answer the Judge's question, and said "Your Honor, if the question is asked for the plaintiff I don't want it; if it is asked for the defendant, I object." This remark of Mr. Mason suggests the probability that he thought it incompetent for a Judge to introduce evidence not offered by counsel.

Ezra Wilkinson of Dedham, District Attorney, and afterwards Judge of the Superior Court, was as learned in the classics as in the law. Meeting him in the street in Boston one day, I asked him where a certain passage could be found. He said that he could find it easily and would do so and let me know. Meeting him again about an hour afterwards he said, "Go into Little & Browns and in the right-hand book case, third shelf, fourteenth book, and on the three hundred and twenty-fifth page you will find the passage." Such Judges as Ezra Wilkinson and Charles Allen who has recently, since his retirement from the bench, made an invaluable contribution to Shakespearian literature, disclose to us the thoughts of those on the bench, who appear to be absorbed in the drudgery of their official positions. Judge Wilkinson was a bachelor and had some of a bachelor's habits. He told me once that he still owned every pair of boots that he had bought for forty years, and that if any of them went out of fashion they were sure to come into fashion again after a time.

Judge Charles Henry Warren, who sat on the bench of the Common Pleas Court from 1839 to 1844, not only grasped almost intuitively the salient points of cases on trial, but had also a wonderfully retentive memory. He was a member of my family during the last three years of his life, and he told me that as a lawyer he never had a brief, as District Attorney he never lost an indictment, and that after a service of nearly five years on the bench he could have put in his pocket all the notes he had ever taken. He was a man of keen wit, sharp in repartee and always ready with a *bon mot* when occasion offered. I remember that at the opening of the Old Colony Railroad in 1845 a large party of gentlemen went to Plymouth on a special train, and that the Judge said as the cars ran swiftly by the burial ground in Quincy, "Here, gentlemen, you have an illustration of the quick and the dead." At the annual festival of the New England Society of New York, in 1844, I think, the Judge was a guest. It was then the custom, as it is now, to invite the Presidents of the Knickerbocker, St. George, St. Andrews and St. Patrick societies, and on that occasion the President of the St. Patrick Society closed his speech with a toast, now somewhat hackneyed, but then entirely new, "Plymouth Rock, the Blarney Stone of New England." Judge Warren rose at once and said, "Mr. President, permit me to offer in response to the toast we have just heard, 'The Shamrock of Ireland and the true rock of New England.'"

Judge Merrick, who contributed to the learning and dignity of two courts, the Common Pleas and Supreme Judicial, was a man of a singularly tender nature and endowed with great professional ability, which however was limited and restrained by a conscientious regard for personal proprieties, which unfitted him for the rough and tumble of the criminal courts. In the trial of Professor John W. Webster, whom he defended, assisted by Edward D. Sohler, which I attended, he seemed to me to be wanting in that bold aggressiveness and air of confidence in the innocence of his client which are the essential qualifications of a crim-

inal lawyer. Perhaps he had served too many years as District Attorney to believe any man under indictment to be innocent. While a feeling seemed to pervade the public mind that the conviction of Webster was necessary to prove that no partiality would be shown to men in high social life, there was an opportunity for a daring attorney like Butler or Farley or Somerby to denounce the influence against his client of the wealth which Parkman represented, and thus in part at least to counteract the current of popular sentiment. But this Judge Merrick was not the man to do. Indeed there was an atmosphere of timidity and dejection surrounding the defense through the whole trial which was only for a moment dissipated while the witness Clary was testifying that he saw Parkman in the street at a time later than that when it was claimed that the murder was committed. There was a piece of evidence too, of which the defense did not seize the full advantage. It was proved that Webster went to Parkman's house and made an appointment for him to call at the medical school on the day of the murder, and this was claimed by the Government as proof of a deliberate plan to commit the crime. Though at that time and until 1858, if the killing were proved, malice aforethought was presumed, unless there was conclusive evidence to the contrary, the improbability amounting almost to impossibility that a murderer would allure his victim to his death not by a sealed letter nor by personal request but through a third party, if properly enforced, would have had on the minds of at least some of the jury sufficient influence to prevent a conviction of murder. In the trial of Edward Stokes for the murder of James Fiske an incident occurred similar in the presumption it furnished which in the hands of Rufus Choate would have made a verdict of murder impossible, and yet the counsel for the defense, if I remember correctly, took no notice of it. It appeared in evidence that Fiske entered a side door of the Fifth Avenue Hotel and was about to go up a stairway just as Stokes appeared at the head of the stairway to go down. The theory of the defense was that

both had pistols, and that Stokes seeing Fiske about to draw his was the first to fire. The incident to which I refer was the testimony of a servant of the hotel that Stokes immediately ran into the upper corridor crying out, "Go for a Doctor! Go for a Doctor!" Mr. Choate would have made it impossible for a jury to believe that a deliberate murderer would have been anxious to save the life of his victim. Concerning the fate of Dr. Webster, it is my belief that he was finally the victim of class feeling in the community. York, a colored murderer, had been recently executed in spite of a strong petition for commutation, and it was felt that mercy, which had been denied to a poor illiterate negro, should not be extended to a college professor. My own conviction has always been that the blow, which destroyed the life of Dr. Parkman, was inflicted in a sudden fit of passion provoked by an inexorable creditor, and that the subsequent acts of Webster were those to which any timid man might resort to conceal his crime.

There were other men fifty or sixty years ago besides those already mentioned who occupied leading positions at the Suffolk bar. Jonathan Palmer Rogers, or Jock Rogers as he was familiarly called, came from Maine, where he had been Attorney General, and settled in Boston in 1840, and died in 1846 after six years of lucrative practice.

Joel Parker came to Massachusetts from New Hampshire, where he had been Chief Justice of the Superior Court, and Joseph Bell came to Boston from New Hampshire in 1842, and until his death in 1851 stood in the front rank of Suffolk County lawyers. His son, Joseph Mills Bell, became a partner of Rufus Choate and married his daughter, a cousin, Mr. Choate and Joseph Bell having married sisters, daughters of Mills Olcott of Hanover, N. H. He was on the staff of General Butler in the early part of the civil war and as Judge of the Recorder's Court in New Orleans, rendered valuable service. He was on one of the ships, which ran by the forts on the Mississippi River, and on his return to Boston one of his friends said to him, "Joe weren't you fright-

ened?" "I don't know whether I was or not," he said, "but this I know, that we were one hour running the forts, that when the first gun was fired I had two papers of fine cut tobacco in my pocket, and that when the last gun was fired I had used it all up."

Gustavus Adolphus Somerby came to the Suffolk bar a little later than those above mentioned. In his defense of Leavitt Alley, charged with murder and tried in Boston in 1873, he achieved a victory as great as any recorded in the history of Massachusetts capital trials. In the catalogue of celebrated defenses it stands beside those of Thomas Oliver Selfridge by Samuel Dexter, of Albert J. Tirrell, by Rufus Choate, and of Lizzie Borden by George Dexter Robinson. While not suggesting the possibility of the guilt of the son, instead of the father, he so conducted the examination of witnesses, while omitting to call the son to the stand, as to cause the jury of its own volition to raise the question whether the son and not the father was not really the guilty party. Mr. Somerby never recovered from the effects of this trial, and died in 1879, with a reputation as a criminal lawyer, which a longer life and ampler opportunities would have fully established and confirmed.

Of Charles Greeley Loring, Sidney Bartlett and Benjamin Robbins Curtis, the writer has no diverting story to tell. All of them, scions of pure New England stock, graduates of Harvard, and of unimpeachable character and purity of life, they stood for many years at the head of the bar, bearing worthily the honors which Webster and Dexter and Mason had lavishly received before them. The professional career of Mr. Loring, pursued at times with difficulty, while suffering from a disease of the eyes, and at the age of sixty practically closed by his acceptance of the position of Actuary of the Massachusetts Hospital Life Insurance Company, is discernible at every step in the volumes of the Massachusetts Reports. Professor Theophilus Parsons said that during the thirty years preceding 1855, "The published decisions of the Supreme Judicial Court will show that no other man had

so large a number of cases in court, and of the cases of no other was the proportion so large of those, which by the novelty of the questions they raised, or of the peculiar circumstances, to which they require the application of acknowledged principles, may be considered as establishing new law, or giving new scope and meaning to recognized law."

Mr. Bartlett, five years the junior of Mr. Loring, was not far behind him in reaching the rank, in which he stood, and until the age of ninety, twenty-two years after the death of Mr. Loring and fifteen years after the death of Mr. Curtis, he held the position, not only of Nestor of the bar, but also its acknowledged leader. Without the art to captivate a jury, his sphere was in counsel and in arguments before the court, and when his opinions were written, the fountains of law were exhausted. It was said by a Chief Justice of the United States Supreme Court, that no man was so instructive to the bench as Mr. Bartlett, and that when his arguments were finished it was useless to "rake after the cart."

Benjamin Robbins Curtis belonging to the same school of lawyers as Mr. Loring and Mr. Bartlett was not brilliant before a jury but was learned in the law, wise in counsel, and in the workings of his mind logical and judicial. The honors bestowed on him showed the public estimate of his character and attainments. Judge of the United States Supreme Court from 1851 to 1856, appointed with William M. Evarts and Caleb Cushing in 1871 counsel for the United States before the Board of Arbitration at Geneva, an office which he declined, and in 1868 one of the counsel for Andrew Johnson in his impeachment trial, he ran through an especially honorable career, which was closed by his death in 1874, at the age of sixty-five, while his mental powers were still unimpaired and vigorous.

While on the Supreme bench Mr. Curtis gave a dissenting opinion in the famous case of Dred Scott which excited intense interest throughout the country, and as a generation and a half have elapsed since the decision in that case, its rehearsal may be interesting to many readers.

The case was Dred Scott against Sandford and the opinions of all the justices may be found in Howard's Reports, volume 19. It was brought up by writ of error from the Circuit Court of the United States in the District of Missouri, where Scott, as a citizen of Missouri, had brought an action of trespass *vi et armis* against Sandford, a citizen of New York, who had arrested the plaintiff as his slave.

Before the suit was tried Scott had brought an action in the Circuit Court of St. Louis County, a state court, to obtain his freedom, and secured a verdict in his favor. On a writ of error to the State Supreme Court the judgment was reversed and the case remanded to the State Circuit Court, where it awaited the decision of the United States Supreme Court in the suit for trespass.

The suit for trespass was tried in May, 1854, and the defendant, in his answer, declared that the plaintiff was not a citizen of Missouri because he was a negro, whose ancestors were of pure African blood. The jury were instructed by the Court that the law was with the defendant and a verdict of not guilty was rendered. The plaintiff filed exceptions to the ruling, and on these exceptions the case had come to the Supreme Court.

The opinion of the Court given by the Chief Justice, Roger B. Taney, and concurred in by his Associates, James B. Wayne, John Catron, Peter V. Daniel, Samuel Nelson, Robert C. Grier and John A. Campbell was that "a negro, whose ancestors were imported into this country and sold as slaves, whether he be bond or free himself, cannot become a member of the political community formed and brought into existence by the Constitution of the United States, and become entitled to all the rights and privileges and immunities guaranteed by that instrument to the citizen, one of which rights is the privilege of suing in a Court of the United States in the cases specified in the Constitution, and that the plaintiff Scott was not therefore a citizen of Missouri in the sense in which that word was used in the Constitution."

Messrs. Curtis and McLean dissented from the opinion of the Court, and Mr. Curtis declared :

“ 1st. That the free native born citizens of each State are citizens of the United States.

“ 2d. That as free colored persons born within some of the States are citizens of those States such persons are also citizens of the United States.

“ 3d. That every such citizen residing in any State has the right to sue and is liable to be sued in the Federal Courts as a citizen of that State in which he resides.”

He stated in closing his opinion, “ I dissent from that part of the opinion of the Court in which it is held that a person of African descent cannot be a citizen of the United States.”

John P. Hale of New Hampshire appeared at least once in Court in Boston, and perhaps more than once. The occasion to which I refer was the trial of the alleged rescuers of Shadrach, a fugitive slave, from the hands of the officers in the Boston courthouse. The occasion was a memorable one. Mr. Hale's abhorrence of slavery and the fugitive slave law, his sympathy for the slave and his admiration for those who at personal sacrifice befriended him, stirred to their depths the feelings of his heart and the resources of his mind, and it is safe to say that for eloquence and power his speech on that occasion was never excelled before a Suffolk jury.

Richard H. Dana, Jr., appeared also for one or more of the defendants in the rescue trials. A clear and honest statement made with the choicest words and with persuasive force always characterized his speeches. No better example of his style of oratory can be found than the memorable address made by him in the Constitutional Convention of 1853 against the proposition to make the Judiciary of Massachusetts elective. If the proposition should ever recur, the distribution of his speech in a pamphlet form would furnish the most conclusive arguments against its adoption.

Judge Charles Allen of Worcester, Associate Justice in

the old Common Pleas Court, Chief Justice of the Superior Court for the County of Suffolk and Chief Justice of the Superior Court for the Commonwealth, is sketched in a later chapter in connection with the latter Court. It may be added here that combined with his learning in the law he possessed the keenest power of invective. He wasted neither words nor time in prolonged attacks, but with a single blow demolished his antagonist. At a Free Soil Convention in Bridgewater in the Van Buren and Adams campaign in 1848, he was one of the speakers. He had left the Whig party on the nomination of General Taylor and was bitterly denounced by his old party friends. The week before, there had been a Whig Convention in Bridgewater, and William Baylies, a very wise and eminent man, Charles Henry Warren, a very witty one, and Seth Sprague, a brother of Judge Peleg Sprague, were the speakers. Mr. Sprague seized the opportunity to make a severe attack on Judge Allen, which the Judge repelled when his turn came. In his allusion to Mr. Sprague he compared him to Beau Nash whose picture, hanging between the marble busts of Newton and Pope, was happily described by Jane Brereton in the following couplet :

The picture, placed the busts between,
Gives satire all its strength;
Wisdom and wit are little seen,
But Folly at full length.

The following illustrates the humor of Judge Ebenezer Rockwood Hoar, who though a man of the warmest heart, sometimes added the flavor of sarcasm to his witty sayings. A Massachusetts Judge somewhat noted for his discourtesy to members of the bar, criticizing one day the appointment of a new Judge, said to him, "Judge, what do you think of the selection?" The Judge at once replied in words with a latent meaning which probably his inquirer later discovered, "He is a gentleman, but perhaps that is not an absolute disqualification."

William Whiting must not be overlooked, — an advocate who took charge of only such cases as he had time to thoroughly understand ; who made himself master of the art or science or industry to which his suit related ; and if in a patent case, who knew as much of the intricate details of the machine in question as the inventor himself ; or if a marine case, who understood every part of the ship from truck to keelson.

Nor must Franklin Dexter be forgotten with his Grecian head, his curly hair, his sharp-cut features, and brilliant eye,—

A combination and a form indeed,
Where every God did seem to set his seal,
To give the world assurance of a man.

I remember him in the trial of Mrs. Kenney for the murder of her husband, in which he defended the prisoner, and James T. Austin was the Attorney General and prosecuting officer. A friction was manifest all through the trial between Mr. Austin and Mr. Dexter which it was said at the time was the afterglow of the feeling with which the Austin family had always resented the appearance for the defendant by Samuel Dexter, the father of Franklin, in the trial of Thomas O. Selfridge for killing Charles Austin, a kinsman of the Attorney General.

Timothy G. Coffin of New Bedford was a terror to opposing counsel. Though not especially learned in the law he was a successful advocate, and at the Bristol and Plymouth courts was for many years a popular lawyer in criminal causes. He generally managed to get the laugh on his antagonist, and nine times out of ten if a lawyer gets the laugh on him his case is gone. At one time the District Attorney in the Southeastern District was an extremely homely man, and in examining a witness Mr. Coffin asked him what kind of a looking man such a person was. The witness replied that he was a handsome man. “ Was he as handsome a man as my friend here, the District Attorney ? ” asked Mr. Coffin.

On another occasion in a civil case his opponent was a very tall and erect man who wore his hair well brushed up high above his head. Mr. Coffin in addressing the jury cautioned them against the eloquence of the Lombardy Poplar of the bar who was to follow him.

George Marston, Attorney General from 1879 to 1883, once at the Plymouth Court suffered one of those setbacks, which lawyers sometimes encounter when they have not examined their witnesses thoroughly beforehand. The case on trial was for the abatement of a nuisance, and the defendant was the owner of a fish guano factory in Duxbury. A number of witnesses had been called to testify to the nuisance, but the star witness, who lived some distance from the factory, was an old woman who had been reserved for the last. She was so deaf that she had heard nothing of the testimony and did not even know what the case was about.

"Where do you live?" asked Mr. Marston.

"In Duxbury," replied the witness.

"In what part of Duxbury?"

"In the village."

"How far should you judge from Mr. Seaver's guano factory?"

"From a half to three quarters of a mile."

"Have you ever smelt a bad smell at your house?"

"Lor', yes, very bad."

"When was it?"

"About the middle of last July."

"What did it smell like?"

"It smelt like a dead hen."

"You say it smelt like a dead hen?"

"Lor', yes, I know it did for we found the hen."

No picture of the courts fifty years ago, especially of the Municipal Court, would be complete without an allusion to John Augustus, the shoemaker philanthropist, who for more than twenty years made the courts his daily resort, and devoted himself to the reclamation of offenders. In cases deserving sympathy he offered himself as bondsman

for the good behavior of the criminal, thus securing his release and almost invariably his reformation.

A remarkable character in and about the courts in Boston fifty years ago was a man who called himself Count Johannes. His name was George Jones, the son of George Jones, a constable of Boston, where he was born. In early life he acted on the stage of the old Tremont Theatre. About the year 1840, when about thirty-five years of age, he went to England and there in the lesser theatres appeared in some of the leading parts in Shakespeare's plays. His performances amused the people and gave him a notoriety to which London Punch with its satire largely added. He returned to Boston not many years before the war and made himself conspicuous by his libel suits against persons who dared to express doubts of his title. He claimed that the rank of Count had been conferred on him in England, and he wore the badges of his assumed rank. He not only managed his own suits but appeared in court as special attorney of others, and for several years was the terror of the newspapers and the courts. In a suit brought against Wm. L. Burt for a libel contained in an address to the jury in a case in which the Count was the plaintiff, the libel consisting of the declaration that he was insane, he described himself in the declaration to the writ as "a public author of historical and other works, public lecturer and public oratorical illustrator of the Sacred Scriptures and the works of Shakespeare, and special attorney."

He brought another suit against Francis H. Underwood for writing in the Boston Atlas and Bee that "there flourishes a soi disant count with his decorations given by the Grand Duke Pumpnickel or bought from some similar august potentate." This suit caused Mr. Underwood much trouble, but at much cost he discovered the origin of the assumed title and effectually put an end to the pretensions of the man who bore it. Affidavits were secured in England showing that Mr. Sartoris, the son-in-law of Adelaide Kemble, sister of Fanny Kemble, in order to make sport of Jones,

invited him to a supper in London, and in the course of the evening told him with assumed seriousness that he ought to have a title, and that as he himself was descended from an ancient count whose right to confer the rank on others ensured to his descendants, he would bestow the title on him. Making him kneel on the floor he said: "Rise, George, the Count Johannes, Knight of the Golden Spur." But as Mr. Sartoris was really descended from a count it was necessary to show that he had no power to confer the title, and an affidavit was obtained from the Chancellor of Austria showing that the last and only grant of the title with a descending power of transfer was made in 1495, and that the family possessing it had lapsed. It was also shown by experts, among whom was Edmund Quincy, that the title of the Knight of the Golden Spur was alone given by the Pope to such as had performed some special service to the Romish Church.

The Count finally became so troublesome with his suits that he was indicted for barratry and convicted; but a sentence to the House of Correction was withheld on the condition that he would leave the State. The reader is referred for further information concerning the above libel suits to *Johannes vs. Bennett*, 5th of Allen, and *Johannes vs. Burt*, vs. Underwood, vs. Mudge, vs. Nickerson, vs. Pangborn, 6th of Allen, Mass. Reports. Jones went to New York and is said to have died there about 1880.

The first case, *Johannes vs. Bennett*, was tried in the Supreme Court before Judge Merrick, and a verdict given for the plaintiff. The defendant was a clergyman of whose congregation a lady engaged to be married to Johannes had been a member. The parents of the lady objected very strongly to the engagement, and the defendant at their request wrote a letter to her, which contained the alleged libel. At the trial the plaintiff testified that he had voluntarily burned the letter, and the court permitted him to state its contents. To this evidence the defendant took exceptions, and Chief Justice Bigelow in giving the reasons of the Court for setting aside the verdict said that "it is a car-

dinal principle that when it appears that a party has destroyed an instrument or document the presumption is that if it had been produced it would have been against his interest. *Contra spoliatorem omnia presumuntur*. A person who has wilfully destroyed the highest evidence ought not to be permitted to enjoy the benefit of the rule admitting secondary evidence."

JUDICIAL HISTORY OF MASSACHUSETTS.

CHAPTER I.

THE COLONY OF NEW PLYMOUTH.

On the 10th of April, 1606, King James issued letters patent to two companies, granting to them a strip of territory along the American coast one hundred miles wide and extending from the 34th to the 45th degree of latitude. To the Southern Virginia Company, composed of "certain knights, gentlemen and merchants in and about our city of London," he granted that part of the territory between the 34th and 41st degrees; and to the Northern Virginia Company, composed of "certain knights, gentlemen, merchants and their associates in and about our cities of Bristol, Exor and our town of Plymouth and other places," he granted that part between the 38th and 45th degrees. The three degrees between the 38th and 41st, granted to both colonies, were to be possessed by the first colony occupying them.

The Southern Virginia Company, whose jurisdiction extended from about the latitude of Cape Fear to that

of New York, issued a patent, or grant, dated February 2, 1619, to John Pierce and his associates for the benefit of the Pilgrim church, a portion of which was then preparing for its departure from Holland to America. The Pilgrim Company, for reasons which it is not necessary in this narrative to explain, landed at Plymouth outside of their grant and within the jurisdiction of the Northern Virginia Company; and thus occupying territory without right they sent an application by the Mayflower on her return for a patent or grant from that company. Before the application had reached its destination, King James, on the 3d of November, 1620, issued a new charter to the Northern Virginia Company, under the name of "The council established at Plymouth in the county of Devon, for the planting, ordering, ruling and governing of New England in America." By this council a patent or grant was issued June 1, 1621, and sent over in the *Fortune*, which reached Plymouth in November, 1621.

Before referring more particularly to this patent, the attention of the reader must be called to the charter of King James under which the Virginia Company derived its authority, in order that a clear understanding may be had of the foundation on which the institutions of New England, including the judiciary system, were finally built. The full text of this charter will be found in the Appendix, marked "A."

The reader's attention must next be called to the patent issued by the council for New England to the Pilgrim Colony, and brought over in the *Fortune* in November, 1621. It is preserved in Pilgrim Hall in Plymouth, and is engrossed on parchment bearing the signatures of the Duke of Lenox, the Marquis of Hamilton, the Earl of Warwick, Lord Sheffield, the Earl of Arundell and Sir Ferdinando Gorges. One signature,

probably that of the Marquis of Buckingham, is missing. The full text of this patent will also be found in the Appendix marked "B."

On the arrival of the Mayflower in Cape Cod harbor the following compact, rendered necessary by the fact that the Colony was outside of the jurisdiction of the company whose patent they had, was drawn up and signed :

"In the name of God, Amen.

"We whose names are underwritten, the loyal subjects of our dread sovereign Lord King James, by the grace of God of Great Britain, France and Ireland, king, defender of the faith, etc., having undertaken for the glory of God and advancement of the Christian faith, and honor of our king and country, a voyage to plant the first colony in the northern parts of Virginia, do by these presents solemnly and mutually, in the presence of God and one of another, covenant and combine ourselves into a civil body politic, for our better ordering and preservation and furtherance of the ends aforesaid; and by virtue hereof to enact, constitute and frame such just and equal laws, ordinances, acts, constitutions and offices from time to time as shall be thought most meet and convenient for the general good of the colony; unto which we promise all due submission and obedience. In witness whereof we have hereunto subscribed our names at Cape Cod the 11th of November, in the year of the reign of our sovereign lord King James of England, France and Ireland the eighteenth and of Scotland the fifty-fourth Anno Domini 1620."

This compact, to which too much significance has been attached, was only a temporary expedient, and was of no use after the arrival of the patent issued by the Council for New England in November, 1621. Its phraseology, so far as it related to the government of the Colony, was probably copied from the patent of the Southern Virginia Company in their possession, which probably, like the new patent, gave them authority "to establish such laws and ordinances as are for their better government and the same by such officer or officers

as they shall by most voices elect and choose to put in execution."

On the 13th of January, 1629, the Council for New England issued a new patent to the Plymouth Colony defining the territorial limits of the Colony of New Plymouth. This patent granted to the colonists "all that parte of New England in America aforesaid and tracte and tractes of land that lye within or betweene a certain rivolet or rundlett there commonly called Coahassett alias Conahassett towards the North, and the river commonly called Naragansetts river towards the South, and the great westerne ocean towards the East, and betweene and within a straight line directly extendinge upp into the maine lande towards the West from the mouth of the said river called Naragansetts river to the utmost limitts and bounds of a cuntry or place in New Englande called Pokenacutt alias Sewamsett doe extend, togeather with one half of the said river called Naragansetts, and the said rivolett or rundlett called Coahassett alias Conahassett and all lands, rivers, waters, havens, creeks, ports, fishings, fowlings, and all hereditaments, proffitts, comodities and emoluments whatsoever situate lyinge and beinge or ariseinge within or betweene the said limitts and bounds or any of them." The text of this patent will be found in the Appendix marked "C."

In language better understood, the colony line, beginning at a point on Massachusetts Bay between Cohasset and Scituate, ran across to Providence River, thence down Narragansett Bay, through Seconnet River, and thence through Vineyard Sound to the ocean. Under the charter of Charles the Second, issued in 1663 to Rhode Island and the Providence Plantations, Rhode Island claimed all that part of the above territory which now includes Fall River, Freetown, Tiverton, Little Compton, Somerset, Warren, Bristol, Barrington and

parts of Berkeley, Dighton and Rehoboth. A controversy at once ensued, which was partially concluded by the decision of a Royal Commission in 1741, which took the town of Bristol with other towns out of the old Plymouth Colony territory. When the Colony was divided in 1685 into the three counties, Barnstable, Bristol and Plymouth, Bristol was made the shire of the county which took its name, and consequently, when that town was given to Rhode Island, Taunton took its place as the shire of the county. It is only necessary to say further in connection with the controversy that it was not definitely settled until 1861, when after a continuance of nearly two hundred years, the present boundary between Massachusetts and Rhode Island on the old Plymouth Colony line was established.

On the authority of the Royal Charter issued to the Council for New England and of the two patents issued by the Council to the Plymouth Colony, the institutions of the Colony, including its judiciary were established. It is a remarkable fact that without a royal charter the Colony continued until 1686 a free, independent, democratic commonwealth without the slightest interference from the home government, making laws, establishing courts, choosing officers by the people, incorporating towns and performing all the functions of a state as fully and completely as Massachusetts does to-day. On the 19th of December, 1686, Sir Edmund Andros arrived in Boston with a commission as Governor of New England, and during his administration the order of affairs was temporarily disturbed, but resumed in 1688 on the accession of William and Mary to the throne.

It is difficult to fix the dates of the passage of laws relating to the courts of the Colony. The colonial laws were revised four times in 1636, 1658, 1671 and 1684. The revision in 1636 was prepared by a committee

composed of Governor Wm. Bradford and assistants, and Wm. Brewster, Ralph Smith, John Done and John Jenney, of Plymouth; Jonathan Brewster and Christopher Wadsworth, of Duxbury, and James Cudworth and Anthony Annable, of Scituate. The revision of 1658 was prepared by Wm. Collier, Timothy Hatherly, John Alden, James Cudworth and Josiah Winslow; that of 1671, which was a complete digest of all laws then in force, was prepared by Governor Thomas Prentice, Thomas Hinckley and John Walley, and that of 1684 by Governor Thomas Hinckley, Barnabas Lothrop, Capt. Walley, Capt. Lothrop and Capt. Thomas. These various revisions contained re-enactments of laws passed since the previous revision with perhaps, others added.

The first law relating to the courts was passed December 17, 1623, and provided that all criminal facts and all matters of trespass and debts should be tried by a jury of twelve men. In 1633 it was enacted that wills be proved before the Governor and Council within one month after the death of the testator and that a full inventory of estates be filed before the issue of letters of administration. In the same year the fee of a juryman was fixed at six pence and of the foreman twelve pence.

In 1636 a grand jury was provided for and the Governor and Assistants were authorized to determine civil cases involving not more than forty shillings and criminal cases involving a small fine, all trials before that time having been had in the General Court.

At various times before the division in 1685 of the Colony into the three counties of Barnstable, Bristol and Plymouth, there were four courts organized, the General Court, the Court of Assistants, the Selectmen's Court and a Court of Admiralty. The General Court

up to 1639 was composed of the Governor, Assistants, and all the freemen of the Colony, and hence its name. At that time, besides Plymouth, the Colony included the incorporated towns of Duxbury, Scituate, Sandwich, Yarmouth, Taunton and Barnstable, and it was found inconvenient for the freemen to attend in a body at Plymouth. The Governor and Assistants were chosen by the people, and the people in the General Court enacted the laws. In this respect the government of the Plymouth Colony was more democratic than that in the early days of the Massachusetts Colony in which the people chose the Assistants, the Assistants the Governor, and the Governor and Assistants enacted the laws.

In 1639 owing to the inconvenience of the existing system the following law was passed :

“Whereas complaint was made that the ffreemen were put to many inconveniences and great expense by their continuall attendance at the Courts, It is therefore enacted by the Court for the ease of the severall colonies and Townes within the Government, That every Towne shall make choyce of two of their ffreemen, and the Towne of Plymouth of foure to be Committee or Deputies, to joyne with the Bench to enact and make all such lawes and ordnances as shall be judged to be good and wholesome for the whole. Provided that the lawes they doe enact shal be ppounded one Court, to be considered upon untill the next Court, and then to be confirmed if they shal be approved of (except the case require present confirmacon). And if any act shall be confirmed by the Bench and Committees, which, upon further deliberacon, shall prove prejudicial to the whole, That the ffreemen at the next elecon Court after meeting together, may repeale the same and enact any other usefull for the whole; and that every Township shall beare their Committees charges; and that such as are not ffreemen, but have

taken the Oath of fidelitie, and are masters of famylies and Inhabitants of the said Townes, as they are to beare their parte in the charges of their Committees, so to have a vote in the choyce of them, provided they choose them only of the ffreemen of the said Towne whereof they are; but if any such Committees shall be insufficient or troublesome, that then the Bench and the other Committees may dismisse them, and the Towne to choose other ffreemen in their place."

In this law is to be found the origin of the representative system of Massachusetts which has in later years been departed from by the establishment of representative districts and the loss of absolute town representation.

Notwithstanding the establishment of the new General Court, composed of deputies or delegates, the whole body of freemen continued to be the electors and chose the officers. And even the laws which the General Court enacted might be repealed by the freemen at their next annual election day.

The freemen of the Colony who held the right of suffrage were at first those who signed the compact in the cabin of the Mayflower, on the 11th of November, 1620, and afterwards included such as might be admitted by a majority vote. In 1633 there were sixty-eight freeman, and in the succeeding two years twenty-three were added. In 1656 it was ordered that "such as are admitted to be freemen of the corporation, the deputies of such towns where such persons live shall propound them to the court being such as have been also approved by the freemen in that town where such persons live." And in 1658 these words were added, "and upon satisfactory testimony given from the freemen of these towns by their deputies, such to be forthwith received without any further delay at the same court

when such testimony is given." In 1658 it was further "enacted by the Court and the authorities thereof that all such as shall be admitted freemen of this corporation shall stand one whole year propounded to the court, viz.: to be propounded at one June court and to stand so propounded until the June court following, and then to be admitted if the court shall not see cause to the contrary." In the same year it was also enacted "that all such as refuse to take the oath of fidelity as Quakers, or such as are manifest encouragers of such, shall have no voice in choice of public officers in the place where they dwell, or shall be employed in any place of trust while they continue such; that no Quaker, Ranter, or any such corrupt person shall be admitted to be a freeman of this corporation; that all such as are opposers of the good and wholesome laws of this Colony, or manifest opposers of the true worship of God, or such as shall refuse to do the country service, being called thereunto, shall not be admitted freemen of this corporation, being duly convicted of all or any of these; and that if any person or persons are or shall be freemen of this corporation that are Quakers, or such as are manifest encouragers of such and so judged by the court and of the laws thereof, and such as judged by the court gravely scandalous, as liars, drunkards, swearers, etc., shall lose their freedom of this corporation." Finally in 1671 it was provided that "freemen must be twenty-one years of age, of sober and peaceable conversation, orthodox in the fundamentals of religion, and possessed of twenty pounds ratable estate in the Colony."

The sessions and jurisdiction of the General Court changed from time to time, but under a law passed in 1666 it was held three times in each year for the trial of causes.

The Court of Assistants, composed of the Governor and Assistants, sat three times in each year to try capital, criminal and civil causes, and to receive and try all appeals from the inferior courts. It had the power to summon juries and appoint clerks, and the Governor could call the court at any time for the trial of capital cases, and to try cases at the request of strangers or foreigners. This court could also try such equity cases as could not be relieved by common law.

The Selectmen's Court was established in 1661, under a law which

“ Provided that in every Towne of this Jurisdiction there be three or five Celectmen chosen by the Townsmen out of the freemen, such as shal be approved by the court; for the better managing of the afares of the respective Townships; and that the Celectmen in every Towne or the major parte of them are heerby Impowered to heare and determine all debtes and differences arising between p'son and p'son within their respective Townshipes not exceeding forty shillings; as also they are heerby Impowered to heare and determine all differences existing betwixt any Indians and the English of their respective Townshipes about damage done in corne by the coves, swine or any other beastes belonging to the Inhabitants of the said respective Townshipes; and that the determination of the abovesaid differences not being satisfied as was agreed, the party wronged to repaire to some Magistrate for a warrant to recover such award by distrain: It is further enacted by the court That the said Celectmen in every Township approved by the court or any of them, shall have power to give forth sumons in his Majestie's name to require any p'son complained of to attend the hearing of the case and to sumon witnesses to give Testimony upon that account and to determine of the controversyes according to legall evidence;

and that the p'sons complaining shall serve the sumons themselves upon the p'sons complained against ; and in the case of their non appearance to proceed on notwithstanding in the hearing and determination of such controversies as comes before them ; and to have twelve pence apiece for every award they agree upon."

The Admiralty Court was composed of the Governor and three or four assistants, with "such other substantial persons as the Governor might appoint, for the trial of treasons, piracies, felonies, robberies, murders or confederacies on the sea or in any haven, creek or bay."

In addition to the above courts there was a sort of Indian Court established in 1682 by a law which provided that in each town where Indians live some person may be appointed by the Court of Assistants to have an oversight of the Indians in the town and with the Tithingmen hear all causes between the Indians except capital and real, an appeal from their decision to the Court of Assistants being allowed.

After the incorporation of the three counties in 1685 it was ordered "that in each county there shall be kept annually two county courts, which courts shall be kept by the magistrates (Assistants) living in the several counties, or by any other magistrate that can attend the same, or by such as the General Court shall appoint from time to time, and to make a court there shall be present not less than three magistrates or associates, and in no case shall judgment be given without there be two consenting, or the major part if more than four judges ; and in the absence of the Governor or Deputy Governor, the eldest magistrate shall be president of the court ; which court shall have, and hereby have power to order the choice of juries of grand inquest and trials in their several counties, and to constitute clerks and

other needful officers ; the County Treasurer to be appointed and allowed of by said court annually." It was further ordered that the County Courts "shall have and hereby have power to hear, try and determine according to law all matters, actions, causes and complaints, whether civil or criminal, in cases not extending to life or banishment or matters of divorce." And it was also ordered "that all deeds, bargains, mortgages for houses, rents, lands not already recorded in the public records, or that shall not be recorded before the first County Court of each county, shall or may be recorded in the county where they lie by the County Recorder." The County Courts were given power also to settle and dispose according to law of the estate of any person who died intestate within the county and to grant letters of administration and take the probate of wills.

In the above law establishing the County Courts the Deputy Governor is mentioned as presiding in the absence of the Governor, and that officer is the only one having a judicial function not yet mentioned in this narrative. In the early days of the colony there was no provision for such an officer. By a law passed in 1636 the Governor was authorized with the consent of the Assistants to appoint one of their number to govern during his absence, and in 1651 absolute authority was given to the Governor to depute any one of the Assistants whom he shall think fit to be in his absence Deputy Governor. In 1679 it was enacted that the Deputy Governor should be annually chosen.

As with the exception of the Selectmen's Court and the Indian Court, the Governor, Deputy Governor and Assistants furnished the material for the judicial system of the colony the names of the incumbents of those offices are included in this narrative.

GOVERNORS.

John Carver, 1620 to 1621; William Bradford, 1621 to 1632; Edward Winslow, 1633 to 1634; Thomas Prence, 1634 to 1635; William Bradford, 1635 to 1636; Edward Winslow, 1636 to 1637; William Bradford, 1637 to 1638; Thomas Prence, 1638 to 1639; William Bradford, 1639 to 1644; Edward Winslow, 1644 to 1645; William Bradford, 1645 to 1657; Thomas Prence, 1657 to 1673; Josiah Winslow, 1673 to 1680; Thomas Hinckley, 1680 to 1692.

DEPUTY GOVERNORS.

Thomas Hinckley, 1680 to 1681; James Cudworth, 1681 to 1682; William Bradford 2d, 1682 to 1692.

ASSISTANTS.

Isaac Allerton of Plymouth 1621 and 1634; Edward Winslow of Marshfield, 1634-35, 37, 38, 41, 43, 45, 50; William Bradford of Plymouth, 1634-35, 37, 38, 44, 58, 61; John Alden of Duxbury, 1632, 34, 39, 50, 86; Samuel Fuller of Plymouth, 1632; John Howland of Plymouth, 1634-35; Miles Standish of Duxbury, 1632-35, 37, 41, 45, 46; Thomas Prence of Plymouth, 1632-35, 37, 39, 56; Stephen Hopkins of Plymouth, 1634-35; William Collier of Duxbury, 1635, 37, 39, 51, 54, 56, 58, 65; Timothy Hatherly of Scituate, 1636, 37, 39, 58; John Brown of Rehoboth, 1636, 38, 55; John Jenney of Plymouth, 1637, 38, 43; John Atwood of Plymouth, 1638; Edmund Freeman, of Sandwich, 1640-45; William Thomas of Marshfield, 1642, 44, 46, 50; Thomas Willett of Plymouth, 1651-54, 56, 64; James Cudworth of Scituate, 1656, 57, 74, 80; Josiah Winslow of Marshfield, 1657, 72; Thomas Southworth of Plymouth, 1655, 57, 71; Thomas Hinckley of Barn-

stable, 1658, 79; John Freeman of Eastham, 1667, 78, 82, 86; Nathaniel Bacon of Barnstable, 1667, 73; Constant Southworth of Duxbury, 1672-78; James Browne of Rehoboth, 1673, 83; Daniel Smith of Rehoboth, 1679, 83; Barnabas Lothrop of Barnstable, 1681, 86; John Thacher of Yarmouth, 1682-86; John Walley of Bristol, 1684-86.

Precisely what the powers and duties of the Governor and Assistants were in the early years of the colony is not known. In 1636 they were defined by a law of which the following is the text:

“The office of the Governor for the time being consists in the execucon of such laws and ordinances as are or shall be made and established for the good of the corporacon according to the severall bounds and limits thereof, viz: In calling together or advising with the Assistants or Councell of the said corporacon upon such materiall occasion (or so seeming to him) as time shall bring forth. In which assembly and all others, the Governor to propound the occasion of the Assembly and have a double voice therein. If the Assistants judge the case too great to be decided by them and refer it to the Generall Court, then the Governor to summon a Court by warning all the ffreemen aforesaid that are then extant, and there also to propound causes and goe before the Assistants, in the examination of pticulars, and to propound such sentence as shall be determined: further, it shall be lawfull for him to arrest and comit to ward any offenders, provided that with all convent spede he shall bring the cause to hearing, either of the Assistants or General Court according to the nature of the offence. Allso it shall be lawfull for him to examine any suspicious persons for evill against the Colony as to intercept or oppose such as he conceiveth may lead to the overthrow of the same. And this officer continue on one whole yeare and no more without renewing by elecon.”

Until 1624 only one assistant was chosen, but in that

year at the request of the Governor four were added and later the law required the election of seven. In 1636 a law was passed providing that "the office of an Assistant for the time being consisteth in appearing at the Governor's summons and in giving his best advice, both in public court and in private council with the Governor, for the good of the Colonies within the limits of the Government. Not to disclose but to keep secret such things as concern the public good, and shall be thought meet to be concealed by the Governor and Council of Assistants. In having a special hand in the examination of public offenders and in contriving the affairs of the Colony. To have a voice in the censuring of such offenders as shall not be brought to public Court. That if the Governor have occasion to be absent from the Colony for a short time, by the Governor with the rest of the assistants, he may be deputed to govern in the absence of the Governor. Also it shall be lawfull for him to examine and commit to ward where any occasion ariseth when the Governor is absent, provided the person be brought to further hearing with all convenient speed before the Governor or the rest of the Assistants. And it shall be lawful for him in his Majesties name to direct his warrants to any constable within the Government who ought faithfully to execute the same according to the nature and tenure thereof. And may bind over persons for matters of crime to answer at the next ensuing court of his Majestie after the fact committed or the persons apprehended."

On the arrival of Sir Edmund Andros on the 19th of December, 1686, as Governor of New England the old colonial government was suspended and he appointed thirty-nine councillors among whom were Thomas Hinckley, Barnabas Lothrop, William Bradford, 2d., Daniel Smith, John Walley and Nathaniel Clark, of the

Plymouth Colony and delegated the power of making and exacting the laws to the Governor and council subject to the approval of the crown. He declared all public lands vested in the King, and the Governor and Council were made a court of record, and jurisdiction in cases concerning lands and not involving more than forty shillings was given to Justices of the Peace. He also established a "Quarterly Sessions Court" to be held by the several justices in their respective counties, and an "Inferior Court of Common Pleas" to be held in each county by a judge assisted by two or more justices of the county, with a limitation of jurisdiction in Boston to twenty pounds where the court was to sit once in two months, and in other counties to ten pounds where it was to sit annually. In addition to these courts the "Superior Court of Judicature" was established with jurisdiction over all civil and criminal matters in the colony and in which no action could be begun for the recovery of less than ten pounds, unless a question of freehold was involved. This court was to be held in Boston, Cambridge, Charlestown, Plymouth, Bristol, Newport, Salem, Ipswich, Portsmouth, Falmouth, (Portland), Northampton and Springfield, and Joseph Dudley was appointed Chief Justice. Besides a Court of Chancery, special Courts of Oyer and Terminer were appointed at various times. The Superior Court of Judicature had three Judges and the Judges associated with the Chief Justice were at first William Stoughton and Peter Bulkley, and afterwards at various times Samuel Shrimpton, Simon Lynde, Charles Lidget, John West and John Usher. George Farwell was made Attorney General. When the news of the English revolution of 1688 and of the accession of William and Mary reached Boston, Andros was arrested

and sent to England, and the old colonial administration of affairs was resumed.

Joseph Dudley, Chief Justice of the Superior Court of Judicature above mentioned was the son of Governor Thomas Dudley, and was born in Roxbury, Mass., July 23, 1647, and graduated at Harvard in 1665. He at first studied theology, but abandoned it for a political career. He was a representative from 1673 to 1675, assistant from 1676 to 1685 and one of the Commissioners of the United Colonies from 1677 to 1681. He was appointed by James the Second, President of Massachusetts Bay, etc., in 1686 and in 1687 was appointed by Andros Chief Justice. On the accession of William and Mary he was sent to England and afterwards appointed in 1690 Chief Justice of New York. A little later he was made Deputy Governor of the Isle of Wight and continued in that office eight years. In 1701 he was member of Parliament, and from 1702 to 1715 was Governor of the Province of Massachusetts Bay. He died in Roxbury, Mass., April 2, 1720.

William Stoughton, one of the Associate Justices, was born in Dorchester, Mass., in 1631 or 1632, and graduated in Harvard in 1650. For some time a clergyman, he was an Assistant from 1671 to 1676, an agent of the Massachusetts Colony in England in 1677, Chief Justice of the Superior Court from 1692 to 1701, a member of the Council from 1693 to 1701, Lieutenant Governor of the Province of Massachusetts Bay from 1692 to 1701, and was at various times a selectman of Dorchester. He died July 7, 1701.

Peter Bulkley, Associate Justice, was a son of Rev. Peter Bulkley, and was born in Concord, Mass., August 12, 1643. He graduated at Harvard in 1660, was speaker of the House of Deputies from May 19, 1669 to May 31, 1671, and again from May 15, 1672 to May 7,

1673. He was an Assistant from 1667 to 1684 and died at Concord in May, 1688.

Charles Lidgett, Associate Justice, married Mary, daughter of William Hester of Southwark, England, and died in London, April 9, 1698, leaving three children, Peter, Charles and Ann.

Samuel Shrimpton, Associate Justice, was the son of a brazier, and born in Boston in 1643. He died February 5, 1698.

Simon Lynde, Associate Justice, was a Boston man, and the father of Benjamin Lynde, afterward Chief Justice.

John West, Associate Justice, was an attorney from New York.

John Usher, Associate Justice, was a son of Hezekiah Usher, and was born in Boston in April, 1648, and was by occupation a bookseller. He died September 5, 1726.

George Farwell, Attorney General, came from New York, and was sent to England with Andros in February, 1689.

With the record of the two solitary cases of alleged witchcraft tried within the Plymouth Colony this chapter will close.

“General Court, March 5, 1660.

“Joseph Sylvester of Marshfield doth acknowledge to owe and to stand indebted unto his majesty, his heirs, etc., in the sum of twenty pounds sterling in good and current pay; the condition of the obligation is that in case Dina Sylvester shall and doth appear at the Court of Assistants to be holden at Plymouth the first Tuesday in May next and attend the Court's determination in reference to a complaint made by Wm. Holmes and his wife about a matter of defamation; that then this obligation to be void or otherwise to remain in full force and virtue.

“In witness the above bounden hath hereunto set his hand the 9th of March, 1660.

“Joseph Sylvester.

“Dina Sylvester being examined saith the bear she saw was about a stone’s throw from the highway when she saw it; and being examined and asked what manner of tail the bear had, she said she could not tell for his head was towards her.

“May 9, 1661, concerning the complaint of Wm. Holmes of Marshfield against Dinah Sylvester for accusing his wife to be a witch, the Court here sentenced that the said Dina shall either be publicly whipped and pay the sum of five pounds to the said Wm. Holmes, or in case she, the said Dina Sylvester shall make public acknowledgement of her fault in the premises, that then she shall bear only the charge the Plaintiff hath been at in the prosecution of his said suit. The latter of which was chosen and done by the said Dinah Sylvester, viz., a public acknowledgement.”

“March 6, 1676–7.

“The Inditement of Mary Ingham.

“Mary Ingham: thou art indited by the name of Mary Ingham the wife of Thomas Ingham, of the towne of Scituate in the jurisdiction of New Plymouth for that thou haveing not the feare of God before thyne eyes, hast by the healp of the divill in a way of witchcraft or sorcery, maliciously procured much hard mischeiffe and paine unto the body of Mehittable Woodworth, the daughter of Walter Woodworth of Scituate aforesaid, and some others and particularly causing her, the said Mehittable to fall into violent fitts and causing great paine unto severall parts of her body att severall times, soe as shее the said Mehittable Woodworth hath bin almost bereaved of her sencis and hath greatly languished, to her much suffering thereby, and the procuring of

great greiffe, sorrow and charge to her parents; all which thou hast procured, and don against the law of God, and to his great dishonor, and contrary to our sov lord the Kinge, his crowne and dignitee.

“The said Mary Ingham did putt herselfe on the tryall of God and the countrey and was cleared of this inditement in process of law by a jury of twelve men whose names follow :

“MR. THOMAS HUCKENS,

“JOHN WADSWORTH,

“JOHN HOWLAND,

“ABRAHAM JACKSON,

“BENAJAH PRATT,

“JOHN BLACKE,

MARKE SNOW,

JOSEPH BARTLETT,

JOHN RICHMOND,

JERUD TALBUTT,

JOHN FOSTER,

SETH POPE.”

CHAPTER II.

COLONY OF MASSACHUSETTS BAY.

The Charter of the Northern Virginia Company granted by King James in 1606, and its new charter as the "Council established at Plymouth in the County of Devon for the planting, ordering, ruling and governing of New England in America" have been already referred to, the latter of which may be found as stated in the first chapter in the Appendix. On the 30th of December, 1622, the Council for New England granted to Robert Gorges all that part of the main land "commonly called or known by the name of Messachusich" which was described as situated "upon the north-east side of the bay called or known by the name of the Messachusett." Gorges was appointed by the Council in 1623 Lieutenant General of New England and arrived with "passengers and families" in Massachusetts Bay in September of the same year.

On the 19th of March 1627-8 the Council issued a patent to Sir Henry Roswell, Sir John Young, Thomas Southcott, John Humphrey, John Endicott and Simon Whitcomb, including all the land extending from three miles north of the Merrimac River to three miles south of the Charles River. This patent or grant conflicted with that of Gorges, but the conflicting claims were satisfactorily settled. The patent to Sir Henry Roswell is not in existence so far as is known, and none of its terms have been disclosed except so far as they are recited in the royal charter, which passed the seals March 4,

1628-9. One of the earliest movements of the company was the withdrawal of Sir Henry Roswell, Sir John Younge and Thomas Southcott and the assignment of their interest to John Winthrop, Isaac Johnson, Mathew Cradock, Thomas Goffe and Sir Richard Saltonstall, and among the new members were Thomas Dudley, Nicholas West, Thomas Sharpe, William Browne and William Colbron. The affairs of the company were first managed in England, and John Endicott was sent out to New England, arriving at Salem in the ship *Abigail*, on the 6th of September, 1628. His colony was merely a band of emigrants sent over by what may be called the Massachusetts Company, acting under the grant from the Council for New England and before the issue of the royal charter. On the 4th of March 1628-9, a charter was granted the company which, for a better understanding of the authority under which the institutions of Massachusetts Bay, including those of a judicial character were established, is inserted in full in the Appendix marked "D."

After the issue of the charter to the company of which John Endicott was one and to which his Salem Colony was subservient he was permitted to continue as the local Governor until Winthrop arrived with his larger company bearing the charter from the King. After the issue of the charter at a meeting of the Massachusetts Company held on the 28th of July, 1629, Mathew Cradock the Governor named in the charter read certain propositions giving reasons for transferring the government to New England. At the next meeting held on the 28th of August in the same year the Deputy Governor put the question as follows, "As many of you as desire to have the patent and the government of the plantation to be transferred to New England so as it may be done legally hold up your hands; so many as

will not, hold up your hands." The decision is thus entered on the records of the company: "Where by erection of hands it appeared by the general consent of the company that the government and patent should be settled in New England and accordingly an order to be drawn up."

Two days before the vote was taken, on the 26th of August, the following agreement was executed:

"Upon due consideration of the State of the Plantation now in hand for New England wherein we whose names are hereunto subscribed have engaged ourselves, and having weighed the greatness of the work in regard of the consequence, God's glory and the Church's good; as also in regard of the difficulties and discouragements which in all probabilities must be forecast upon the prosecution of this business; considering withal that this whole adventure grows upon the joint confidence we have in each other's fidelity and resolution herein, so as no man of us would have adventured it without assurance of the rest; now for the better encouragement of ourselves and others that shall join with us in this action, and to the end that every man may without scruple dispose of his estate and affairs as may best fit his preparation for this voyage, it is fully and faithfully agreed amongst us and every one of us doth hereby freely and sincerely promise and bind himself in the word of a Christian, and in the presence of God, who is the searcher of all hearts, that we will so really endeavor the prosecution of this work, as by God's assistance we will be ready in our persons and with such of our several families as are to go with us, and such provision as we are able conveniently to furnish ourselves withal, to embark for the said plantation by the 1st of March next, at such port or ports of this land as shall be agreed upon by the

company to the end to pass the seas (under God's protection), to inhabit and continue in New England; provided always that before the last of September next the whole government together with the patent for the said Plantation, be first, by an order of court legally transferred and established to remain with us and others which shall inhabit upon the said Plantation; and provided also, that if any shall be hindered by such just and inevitable let or other cause to be allowed by three parts of four of those where names are hereunto subscribed, then such persons, for such times and during such lets to be discharged of this bond. And we do further promise, every one for himself, that shall fail to be ready through his own default by the day appointed, to pay for every day's default the sum of £3 to the use of the rest of the company who shall be ready by the same day and time,

" RICHARD SALTONSTALL,	THOMAS SHARPE,
" THOMAS DUDLEY,	INCREASE NOWELL,
" WILLIAM VASSALL,	JOHN WINTHROP,
" NICHOLAS WEST,	WILLIAM PINCHON,
" ISAAC JOHNSON,	WILLIAM BROWNE,
" JOHN HUMPHREY,	WILLIAM COLBRON."

On the 20th of October, 1629, a General Court of the Massachusetts Company was held at the house of Thomas Goffe, Deputy Governor, the object of which was to choose a new Governor, Deputy Governor and eighteen Assistants. The record of the meeting is as follows :

" And now proceeding to the election of a new Governor Deputy and Assistants which upon serious deliberation hath been and is conceived to be for the special good and advancement of their affairs, and having received extraordinary great commendations of Mr. John Win-

throp both for his integrity and sufficiency as being one every way well fitted and accomplished for the place of Governor, did put in nomination for that place the said Mr. John Winthrop, Sir R. Saltonstall, Mr. Isaac Johnson and Mr. John Humphrey ; and the said Mr. Winthrop was with a general vote and full consent of this court by erection of hands chosen to be Governor for the ensuing year to begin on this present day ; who was pleased to accept thereof and thereupon took the oath to that place appertaining. In like manner and with like free and full consent Mr. John Humphrey was chosen Deputy Governor, and Sir R. Saltonstall, Mr. Isaac Johnson, Mr. Thomas Dudley, Mr. Jo: Endicott, Mr. Nowell, Mr. William Vassall, Mr. William Pinchon, Mr. Sam: Sharpe, Mr. Edw: Rossiter, Mr. Thomas Sharpe, Mr. John Revell, Mr. Matt: Cradock, Mr. Thomas Goffe, Mr. Aldersey, Mr. John Venn, Mr. Nath: Wright, Mr. Theoph: Eaton, Mr. Tho: Adams were chosen to be Assistants ; which said Deputy and the greatest part of the said Assistants being present took the oaths to their said places appertaining respectively."

The departure of Winthrop for New England occurred on the 8th of April, 1630, and with about fifteen hundred colonists he arrived in Massachusetts Bay on the 12th of June. On his arrival the colony under the administration of Endicott was merged in the Massachusetts Colony of which it was a part, and which now with the charter in its possession set up a government vested according to the terms of the charter in a Governor, Deputy Governor and Assistants, with John Winthrop as its executive head.

Doubts have been entertained by many historical writers whether it was intended that the charter and corporation should be transferred to New England.

Hutchinson in his history says, "It is evident from the charter that the original design of it was to constitute a corporation in England like to that of the East India Company and other great companies, with powers to settle plantations within the limits of the territory under such form of government and magistracy as should be fit and necessary. The first step in sending out Mr. Endicott, appointing him a Council, giving him commission, instructions, etc., was agreeable to this construction of the charter." But Hutchinson overlooks the fact that Endicott came over before the charter was issued. The opinion of Hutchinson has been concurred in by Chalmers, Robertson, Grahame, Hildreth and Young; and Washburn in his *Judicial History of Massachusetts* says, "it was in fact designed that the corporation should exist in England and that colonies should be sent out like that at Salem, while the officers of the company should continue to be elected and to reside in England." On the other hand Dr. Palfrey, the author of the *History of New England*, and Professor Joel Parker of Cambridge have expressed the opinion that the charter was actually drawn with a design on the part of the patentees to be used either in England or in New England, there being an absence of any language locating the corporation in England. The writer has reasons which he thinks sufficient to justify his opinion that the terms of the charter were not violated in transferring it to New England. There was evidently either a silent acquiescence of King Charles in the transfer or, whatever the original intent, a royal assent given. All the above writers seem to have overlooked the agreement dated August 26, 1629, the text of which has been given, in which the following words occur: "That before the last of September next the whole government together with the patent for the said Planta-

tion be first by *an order of court legally transferred* and established to remain with us and others which shall inhabit upon the said Plantation." It may be fairly presumed that after such a declaration an order of court was obtained the record of which has never been published. Again the provision for the oaths to be taken by the officers of the company should be considered. The charter provided that the first Governor, Mathew Cradock should take the oath before one or more of the Masters of the Court of Chancery, and that afterwards his successor should take the oath before the Deputy Governor or two of his Assistants. These different methods of taking the oath suggest the contingency of a removal of the company to New England, where no Master in Chancery would be accessible.

It has also been doubted whether the charter contained any authority to erect judicatories or courts for the probate of wills or with admiralty jurisdiction, or to incorporate towns, colleges or schools, all which powers were exercised, together with the power of inflicting capital punishment. Washburn says that "Nothing is said in the charter in regard to establishing judicatories, nor does it recognize a judicial system of any kind beyond the mention that is made of magistrates." But it provides that "the officers and ministers of the company shall have full power to correct, punish, pardon, govern and rule according to laws established by the company." The power to punish certainly carries with it the power to establish courts for the ascertainment of guilt.

Besides, it must be remembered that the colony was established as well under its grant from the Council for New England as under the charter, and that we are entirely ignorant of the terms of that grant. It is quite possible that the grant gave the colony by authority of its

own charter from King James broader powers than those expressed in the colonial charter. The Plymouth Colony without a charter exercised the same powers as those exercised by the Massachusetts Colony, under its grant from the Council alone, and it has never been claimed that the Council in making the grant exceeded its charter authority.

As this is not a history of the Massachusetts Colony it is not necessary to enter at length into the complaints made against the Colony and the demand for the return of the charter. Winthrop says in his History of New England under date of 1639: "We were much afraid this year of a stop in England by reason of the complaints which had been sent against us, and the great displeasure which the archbishops and others the commissioners of plantations had conceived and uttered against us both for these complaints and also for our not sending home our patent. But the Lord wrought for us beyond our expectations, for the petition which we returned in answer of the order for our patent was read before the Lords and well accepted, as is before expressed; and ships came to us from England and divers other ports with great store of people and provisions of all sorts."

It was provided in the charter that the officers of the colony should consist of a Governor, Deputy Governor and eighteen Assistants, to be chosen annually by a General Court consisting of said officers and all the freemen of the colony, on the last Wednesday in Easter term. The General Court was to sit four times in each year, Easter, Hilary, Trinity and Michas. In addition to the above courts four monthly courts were to be held by the Governor, Deputy Governor and Assistants "for the better ordering and directing of affairs." The first monthly court or Court of Assistants was held

on board the ship *Arbella* in Charlestown harbor, August 23, 1630.

The first General Court was held in Boston on the 19th of October, 1630, at which meeting it was voted that instead of following the method of election prescribed by the charter the freemen should choose only the Assistants, and the Assistants choose out of their own number the Governor and Deputy Governor, and the Assistants should have the power of making the laws and choosing officers to execute them. This abrogation of a provision of the charter which made the election of these latter officers a popular one to the extent that all the freemen had a vote was singular, inasmuch as it converted a democracy prescribed by the King into a partial aristocracy. The first meeting for the election of officers was held on the last Wednesday in May, 1631. At a General Court held on the 9th of May, 1632, "it was agreed upon by the erection of hands that the Governor, Deputy Governor and Assistants should be chosen by the whole court of Governor, Deputy Governor, Assistants and freemen, and that the Governor shall always be chosen out of the Assistants." At a General Court held on the 14th of May, 1634, "it was agreed that none but the General Court hath power to choose and admit freemen. That none but the General Court hath the power to make and establish laws nor to elect and appoint officers as Governor, Deputy Governor, Assistants, Treasurer, Secretary, Captain, Lieutenants, Ensigns, or any of like moment or to remove such upon misdemeanor, as also to set out the duties and powers of the said officers. That none but the General Court hath power to raise moneys and taxes and to dispose of lands, viz: to give and confirm properties."

At the same court it was also ordered "that it shall

be lawfull for the freemen of every plantation to choose two or three of each town before every General Court, to confer and prepare such public business as by them shall be thought fit to consider at the next General Court, and that such persons as shall be hereafter so deputed by the freemen of the several plantations to deal in their behalf in the public affairs of the commonwealth, shall have the full power and voices of all the said freemen derived to them for the making and establishing of laws, granting of lands, etc., and to deal in all other affairs of the commonwealth wherein the freemen have to do, the matter of election of magistrates and other officers only excepted, wherein every freeman is to give his own voice." Thus a General Court composed of deputies was authorized for all purposes except the election of officers, for which the votes of all the freemen were required. As towns became settled and it became inconvenient to attend the General Court for the purpose of electing officers, at a General Court held on the 3d of March, 1635-6 it was ordered "that the General Court to be holden in May next for election of magistrates, etc., shall be holden at Boston, and that the towns of Ipswich, Newbury, Salem, Saugus, Weymouth and Hingham, shall have liberty to stay so many of their freemen at home for the safety of their town as they judge needful, and that the said freemen that are appointed by the town to stay at home shall have liberty for this court to send their voices by proxy." The passage of this law was only one step towards a general election law which was passed on the 9th of March, 1636-7. The record of the court held at that date states that "This court, taking into serious consideration the great danger and damage that may accrue to the state by all the freemen's leaving their plantations to come to the place of elections, have

therefore ordered that it shall be free and lawful for all freemen to send their votes for elections by proxy the next General Court in May, and so for hereafter, which shall be done in this manner: The deputies which shall be chosen shall cause the freemen of their towns to be assembled and then to take such freemen's votes as please to send by proxy, for every magistrate, and seal them up severally, subscribing the magistrate's name on the back side, and so to bring them to the court sealed with an open roll of the names of the freemen that so send by proxy."

Until 1634 the only courts held in the colony were the General Court and the Court of Assistants. Up to that time trials for ordinary offences were had in the General Court and capital trials in the Court of Assistants. In the autumn of 1630 in cases of capital crimes juries were impaneled, and on the 9th of November in that year a Court of Assistants was held, consisting of the Governor, Deputy Governor, Sir Richard Saltonstall, Mr. Ludlow, Capt. Endicott, Mr. Coddington, Mr. Pinchon and Mr. Bradstreet, at which Walter Palmer, who had been indicted for manslaughter, was tried before a jury consisting of Mr. Edmond Lockwood, William Rockwell, Christopher Conant, William Phelps, William Gallard, John Hoskins, Richard Morris, William Balston, William Cheesborough, John Page, John Balsh and Lawrence Leach, and acquitted.

In 1634 it was enacted "that the General Court, consisting of magistrates and deputies, is the chief civil power of the commonwealth; which only hath power to raise money and taxes upon the whole country and dispose of lands, viz.: to give and confirm properties appertaining to and immediately derived from the country; and may act in all affairs of this commonwealth according to such power, both in matters of counsel,

making the laws and matters of judicature, by impeaching and sentencing any person or persons according to law and by serving and hearing any complaints orderly presented against any person or court; and it is agreed that this court will not proceed to judgment in any cause, civil or criminal, before the deputies have taken this oath following: 'I do swear by the most great and dreadful name of the ever living God, that in all cases wherein I am to deliver my vote or sentence against any criminal offence or between parties in any civil case, I will deal uprightly and justly according to my judgment and conscience; and I will, according to my skill and ability, assist in all other public affairs of this court faithfully and truly according to the duty of my place, when I shall be present to attend the service.' "

The members of the Massachusetts Colony were of course believers that the Scriptures embodied the word of God and were infallible. Consequently they believed it their duty to make every offence capital which the Bible declared should be punished by death. Their list of capital crimes numbered sixteen, and nearly all were expressly based on passages of Scripture. They were Idolatry, in obedience to Exodus xxii. 20, Deuteronomy xiii. 6, 10, and xvii. 2, 6; Witchcraft, Exodus xxii. 18, Leviticus xx. 27, Deuteronomy xviii. 10, 11; Blasphemy, Leviticus xxiv. 15, 16; Murder, Exodus xxi. 12, 13, Numbers xxxv. 31; Manslaughter, Leviticus xxiv. 17, Numbers xxxv. 20, 21; Poisoning, Exodus xxi. 14; Bestiality, Leviticus xx. 15, 16; Sodomy, Leviticus xx. 13; Adultery, Leviticus xx. 19 and xviii. 20, Deuteronomy xxii. 23, 27; Man stealing, Exodus xxi. 16; False witness, Deuteronomy xix. 16 and xviii. 16; Rebellion, Numbers xvi., 2d Samuel, iii; same, xviii. and xx.; cursing and smiting of parents by children above sixteen years of age, Exodus xxi. 17, Leviticus xx. 9, Exo-

dus xxi. 15; Stubbornness of children above sixteen years, Deuteronomy xxii. 20, 21; Rape; Arson.

It is difficult to assign a satisfactory reason for the milder code which prevailed in the Plymouth Colony, in which until the migration into the colony from Massachusetts obtained control of legislation in the General Court the offences punishable with death were not half as many as in Massachusetts. Their belief in the infallibility of the Scriptures must have been as thorough as that of their neighbors, but it is undeniable that their long residence in Holland mellowed and softened their natures and led them to look with a forgiving spirit on the frailties of their fellow men.

On the 3d of March, 1635-6 the jurisdiction of the General Court was restricted by an enactment concerning Inferior Courts and Courts of Assistants after which the General Court was chiefly a Court of Appeal. The enactment provided "That there shall be four courts kept every quarter, 1st at Ipswich, to which Newbury shall belong; 2nd at Salem to which Saugus shall belong; 3d at New Towne to which Charlton (Charlestown) Concord, Medford and Watertown shall belong; 4th at Boston to which Roxbury, Dorchester, Weymouth and Hingham shall belong, and that every of these courts shall be kept by such magistrates as shall be dwelling in or near the said towns and by such other persons of worth as shall from time to time be appointed by the General Court so as no court shall be kept without one magistrate at the least and that none of the magistrates be excluded who can and will attend the same; yet the General Court shall appoint which of the magistrates shall specially belong to every of the said courts. Such persons as shall be joined as associates to the magistrates in the said court shall be chosen by the General Court out of a greater number of such

as the several towns shall nominate to them, so as there may be in every of the said courts so many as (with the magistrates) may make five in all. These courts shall try all civil causes whereof the debt or damage shall not exceed £10, and all criminal causes not concerning life, member or banishment. And if any person shall find himself grieved with the sentence of any of the said courts he may appeal to the next great quarter court provided that he put in sufficient caution to present his appeal and to abide the sentence of the magistrates in the said great Quarter Court who shall see that all such that shall bring any appeal without just cause be exemplarily punished." These were called Inferior Courts and the first was to be held on the last Tuesday in June and the others on the last Tuesday in September, December and March respectively. It was also provided that "there shall be four great quarter courts kept yearly at Boston by the Governor and the rest of the magistrates (assistants) the first Tuesday in the fourth month called June, the second the first Tuesday in September, the third the first Tuesday in December and the fourth the first Tuesday in the 1st month called March."

It was further enacted that "all actions shall be tried at that Court to which the defendant belongs," and that "all offenders which shall be in the prison at Boston at the time of any Court there holden shall be tried at that Court, except in the warrant of his commitment he be reserved to the great Quarter Court. And it shall be lawful for the Governor or Deputy Governor or any two magistrates (upon special and urgent occasion) to appoint Courts to be kept upon other days than in the order are appointed."

Another enactment was as follows: "And whereas the most weighty affairs of this body are now, by this

present order and others formerly made brought into such a way and method as there will not henceforth be need of so many General Courts to be kept as formerly, it is therefore ordered that hereafter there shall be only two General Courts kept in a year, viz. : that in the third month called May for elections and other affairs, and the other the first Wednesday in October for making laws and other public occasions of the commonwealth provided that Governor may upon urgent occasion call a General Court at any other time besides the two Courts above mentioned. And whereas it may fall out that in some of these General Courts to be holden by the magistrates and deputies there may arise some difference of judgment in doubtful cases, it is therefore ordered that no law order or sentence of the magistrate on the one parte and the greater number of the deputies on the other part, and for want of such accord the cause or order shall be suspended and if either party think it so material there shall be forthwith a committee chosen, the one half by the magistrates and the other half by the Deputies and the committee so chosen to elect an umpire, who together shall have power to hear and determine the cause in question."

The last provision concerning the requisite assent to any act of the General Court by a majority of the Magistrates, by which term was meant the Governor, Deputy Governor and Assistants, was a step towards an enactment passed in 1644 that the Deputies should form one branch of the General Court and the Magistrates another, each sitting apart and having a negative on the other. Under this arrangement the Governor presided over the Assistants, and the office of Speaker was established as the presiding officer in the House of Deputies.

The judicial system of the colony continued until

1639 with the following divisions: First, the General Court, composed of the Governor, Deputy Governor, Assistants and Deputies, sitting twice in each year; second, the Court of Assistants or Great Quarter Courts, composed of the Governor, Deputy Governor and Assistants, sitting at Boston four times in each year; third, the Inferior Courts kept by magistrates, with Associates appointed by the General Court, with the right of appeal to the Courts of Assistants and last appeal to the General Court, and a Military Court. The last court, of which no mention has before been made, was rather a commission than a court, and was established by a law passed on the 4th of March, 1634-5, which provided that "the present Governor (Thomas Dudley), Deputy Governor (Roger Ludlow), John Winthrop, John Humphrey, John Haynes, John Endicott, William Coddington, William Pinchon, Increase Nowell, Richard Bellingham and Simon Bradstreet, or the major part of them who are deputed by this court to dispose of all military affairs whatsoever shall have full power and authority to see all former laws concerning all military men and munitions executed and also shall have full power to ordain or remove all military officers and to make and tender to them an oath suitable to their places, to dispose of all companies, to make orders for them and to make and tender to them and to see that strict discipline and training be observed, and to command them forth upon any occasion they think meet, to make either offensive or defensive war, as also to do whatsoever may be further behooffull for the good of this plantation, in case of any war that may befall us, and also that the aforesaid commissioners or the major part of them shall have power to imprison or confine any that they shall judge to be enemies to the commonwealth, and such as will not come under command or restraint, as they shall

be required, and shall be lawful for the said commissioners to put such persons to death. This order to continue till the end of the next General Court." This Commission was extended from time to time but finally allowed to die. Its establishment was clearly in violation of the charter which gave the Massachusetts Company the power to carry on a defensive but not an offensive war.

The Magistrates and Associates appointed by the General Court to hold the Inferior Courts were as follows: For Salem and Saugus, John Humphrey and John Endicott, Magistrates or Assistants, with Captain Turner, Mr. Scruggs and Townsend Bishop, Associates; for Ipswich and Newbury, Thomas Dudley, Richard Dummer and Simon Bradstreet, Magistrates, with Mr. Saltonstall and Mr. Spencer, Associates; for Newtown, Charlestown, Medford and Concord, John Haynes, Roger Harlakenden and Increase Nowell, Magistrates, with Mr. Beecher and Mr. Peakes, Associates; for Boston, Roxbury, Dorchester, Weymouth and Hingham, Richard Bellingham and William Coddington, Magistrates, with Israel Stoughton, William Hutchinson and William Heath, Associates.

In 1639 the law establishing the Courts of Assistants or Great Quarter Courts was amended and it was ordered "that there be two Courts of Assistants yearly kept in Boston by the Governor or Deputy Governor and the rest of the Magistrates on the first Tuesday of the first month and on the first Tuesday of the seventh month (March and September), to hear and determine all and only actions of appeal from Inferior Courts, all causes of divorce, all capital and criminal causes extending to life, member or banishment; and that justice be not deferred, nor the country needlessly charged, it shall be lawfull for the Governor, or in his absence the Deputy

Governor (as they shall judge necessary), to call a Court of Assistants for trial of any malefactor in capital causes.

In the same year County Courts were established, though no counties as the term was afterwards applied had at that time been incorporated. They were merely the old Inferior Courts with a new name and with powers more clearly defined. They had no reference to the counties or shires which were established four years later, but simply to civil divisions of the colony made for any purpose and not necessarily incorporated as shires. After the incorporation of the shires in 1643 the jurisdiction of these courts was made to conform to them. The law establishing them provided that "there shall be County Courts held in the several counties by the magistrates living in the respective counties, or any other magistrate that can attend the same, or by such magistrates as the General Court shall appoint from time to time, together with such persons of worth, where there shall be need, as shall from time to time be appointed by the General Court (at the nomination of the freemen of the county) to be joined in a commission with the magistrates so that they may be five in all, three whereof may keep a court, provided there be one magistrate; every of which courts shall have full power to hear and determine all causes, civil and criminal, not extending to life, member or banishment (which, with causes of divorce, are reserved to the Court of Assistants), and to make and constitute clerks and other needful officers, and to summon juries of inquest and trials out of the towns of the county, provided no jurors shall be warned from Salem to Ipswich, nor from Ipswich to Salem."

In the same year, 1639, the Strangers' Court was established under a law which provided that "the Governor or Deputy Governor with any two magistrates, or when

the Governor or Deputy Governor cannot attend it, that any three magistrates shall have power upon the request of any stranger to call a special court to hear and determine all causes, civil or criminal (triable in any County Court according to the manner of proceeding in County Courts), which shall arise between such strangers, or wherein any such strangers shall be party; and all records of such proceedings shall be transmitted to the records of the Court of Assistants, to be entered as trials in other courts, which shall be at the charge of the party or condemned in the case."

With regard to the County Courts it was provided that "they shall take care that the Indians residing in the several shires shall be civilized, and they shall have power to take order from time to time to have them instructed in the knowledge of God."

On the 9th of September, 1639, it was ordered "that there be records kept of all wills, administrations and inventories, as also the days of every marriage, birth and death of every person within this jurisdiction." These records were kept by the Court Clerk and for many years after returns of marriages, births and deaths were made to the Town Clerks copies were transmitted to the Clerk of the Courts.

There was one lesser court existing in 1639 which has not been mentioned. It was ordered on the 6th of September, 1638, "that any magistrate (assistant) in the town where he dwells may hear and determine by his discretion all causes wherein the debt, or trespass or damage, etc., doth not exceed twenty shillings, and in such town where no magistrate dwells the General Court shall from time to time nominate three men, two whereof shall have like power to hear and determine all such actions under twenty shillings, and if any of the parties shall find themselves grieved with any such end

or sentence, they may appeal to the next quarter Court or Court of Assistants, etc., and if any person shall bring any such action to the Court of Assistants before he hath endeavored to have it ended at home (as in this order is appointed) he shall lose his action and pay the defendant's costs. If no appeal be put in the day of the sentence upon such small actions the magistrate or the said two chosen men shall grant execution."

At a meeting of the General Court held in Boston on the 10th of May, 1643, it was ordered "that the whole plantation within the jurisdiction be divided into four shires, to wit :

- | | |
|--------------------|---|
| " <i>Essex</i> | Salem, Lynn, Enon (Wenham) Ipswich, Rowley, Newbury, Gloucester and Chochicawick (Andover). |
| " <i>Middlesex</i> | Charlestown, Cambridge, Watertown, Sudbury, Concord, Woburn, Medford, Linn Village (Reading). |
| " <i>Suffolk</i> | Boston, Roxbury, Dorchester, Dedham, Braintree, Weymouth, Hingham, Nantasket (Hull). |
| " <i>Norfolk</i> | Salisbury, Hampton, Haverhill, Exeter, Dover, Strawberry Bank (Portsmouth)." |

Before going further it is proper to state that the Norfolk shire included some towns within the limits of New Hampshire when that territory became a royal province, and that by an act passed February 4, 1679-80 the county was extinguished and the Massachusetts towns within its bounds were annexed to Essex County.

As a further explanation of questions which at this point of the narrative might arise, it is also proper to state that when the present Norfolk County was incorporated on the 26th of March, 1793, all the towns in

Suffolk County except Boston and Chelsea were placed in that county. Thus Hingham and Hull and Cohasset, which last had been set off from Hingham and incorporated as a town April 26, 1770, became parts of Norfolk County. Hingham and Hull being dissatisfied with their new connection were at the same session of the General Court exempted from the act of incorporation, and after remaining a few years in Suffolk County were on their petition annexed to Plymouth County.

Having reached the division of the Colony into counties in 1643, it will be well to recapitulate the formation of the judicial system at that date. It consisted first of the General Court with appellate jurisdiction from the Court of Assistants; second, the Court of Assistants with appellate jurisdiction from the lower Courts; third, the County Courts with the probate of wills included in their jurisdiction; fourth, Strangers Court, and fifth, Magistrates Court. After the incorporation of the Counties other laws were passed concerning these courts and establishing others, but before proceeding to their consideration it will be proper to include in this narrative a list of the Governors, Deputy Governors and Assistants during the life of the colony, who in their official capacity constituted a large part of the judicial system.

GOVERNORS.

John Endicott, 1629-44, 49, 51 to 53, 55 to 64; John Winthrop, 1630 to 33, 37 to 39, 42 to 43, 46 to 48; Thomas Dudley, 1634, 40, 45, 50; John Haynes, 1635; Henry Vane, 1636; Richard Bellingham, 1641, 54, 65 to 71; John Leverett, 1672 to 78; Simon Bradstreet, 1679 to 86, 89 to 92. From 1686 to 1689 Joseph Dudley and Edmund Andros had jurisdiction, the former as President and the latter as Governor.

DEPUTY GOVERNORS.

Thomas Dudley, 1629 to 33, 37 to 39, 46 to 49, 51, 52; Roger Ludlow, 1634; Richard Bellingham, 1635, 40, 53, 55 to 64; John Winthrop, 1636, 44, 45; John Endicott, 1641 to 43, 50, 54; Francis Willoughby, 1665 to 70; John Leverett, 1671, 72; Samuel Symonds, 1673 to 77; Simon Bradstreet, 1678; Thomas Danforth, 1679 to 86, 89 to 92.

ASSISTANTS.

John Winthrop, 1634; Thomas Dudley, 1635, 36, 41, to 45; Increase Nowell, 1630 to 55; Simon Bradstreet, 1630 to 75; William Pinchon, 1630 to 36, 46 to 50; John Endicott, 1630 to 34, 36 to 40, 45 to 48; William Coddington, 1630 to 36; Roger Ludlow, 1630 to 33; Richard Saltonstall, 1630 to 33; Isaac Johnson, 1630; Thomas Sharp, 1630; William Vassall, 1630; Edward Rossiter, 1630; John Winthrop, Jr., 1632 to 39, 40 to 49; John Humphrey, 1632 to 39, 40, 41; John Haynes, 1634 to 36; Richard Bellingham, 1636 to 39, 42 to 52; Richard Dummer, 1633, 36; Atherton Hough, 1635; Roger Harlakenden, 1636 to 38; Israel Stoughton, 1637 to 43; Richard Saltonstall, Jr., 1637 to 49; Thomas Flint, 1642 to 51, 53; Samuel Symonds, 1643 to 72; William Hibbens, 1643 to 54; William Pinchon, 1642 to 50; Herbert Pelham, 1645 to 49; Robert Bridges, 1647 to 56; Francis Willoughby, 1650, 51; Edward Gibbons, 1650, 51; Thomas Wiggin, 1650 to 64; John Glover, 1652, 53; Daniel Gookin, 1652 to 75; Daniel Denison 1653 to 82; Simon Willard, 1654 to 75; Humphrey Atherton, 1654 to 61; Richard Russell, 1659 to 76; Thomas Danforth, 1659 to 78; William Hawthorne, 1662 to 79; Eleaser Lusher, 1662 to 72; John Leverett, 1665 to 70; John Pinchon, 1665 to 86; Edward Tyng, 1668 to 80; William Stoughton, 1671 to 86; Thomas

Clarke, 1673 to 77; Joseph Dudley, 1676 to 83, 85; Peter Bulkley, 1677 to 84; Nathaniel Saltonstall, 1679 to 86; Humphrey Davey, 1679 to 86; James Russell, 1680 to 86; Samuel Nowell, 1680 to 86; Peter Tilton, 1680 to 86; John Richards, 1680 to 86; John Hall, 1680 to 83; Bartholomew Gedney, 1680 to 83; Thomas Savage, 1680 to 81; William Browne, 1680 to 83; Samuel Appleton, 1681 to 86; Robert Pike, 1682 to 86; Daniel Fisher, 1684; John Woodbridge, 1683, 84; Elisha Cooke, 1684 to 86; William Johnson, 1684 to 86; John Hawthorne, 1684 to 86; Elisha Hutchinson, 1684 to 86; Samuel Sewall, 1684 to 86; Isaac Addington, 1686, John Smith, 1686.

Oliver Purchase chosen in 1685 declined. The charter required the election of eighteen Assistants but in violation of its provisions the number varied from seven to twelve until in consequence of a letter from the King of July 24, 1678, the number of eighteen was thereafter chosen.

The composition of the judicial system at the time of the incorporation of the counties in 1643 has already been stated, but previous to that time certain laws were passed which though not relating to the system were germane to it. On the 7th of October, 1640, a law was passed providing as follows:

“For avoiding all fraudulent conveyances and that every man may know what estate or interest other men may have in any houses, lands or other hereditaments they are to deal in it is therefore ordered that after the end of the month no mortgage, bargain, sale or grant hereafter to be made of any houses, lands, rents or other hereditaments shall be of force against any other person, except the grantor and his heirs, unless the same be recorded as hereafter expressed; and that no such bargain, sale or grant already made in way of mortgage where the grantor remains in possession shall be

of force against any other but the grantor and his heirs except the same shall be entered as is hereafter expressed within one month after the end of this court if the party be within this jurisdiction, or else within three months after he shall return. And if any such grantor, etc., be required by the grantee, etc., to make an acknowledgment of any grant, etc., by him made shall refuse so to do it shall be in the power of any magistrate to send for the party so refusing and commit him to prison without bail or magistrate until he shall acknowledge the same."

The famous Domesday book which contains the surveys of lands in England, made about the year 1080, had something like its counterpart in the record which the County Court kept of the "surveying of houses, backsides, cornfields, mowing ground and other lands," made in compliance with a law passed in April, 1634. This record contained the bounds and quantities of land of each person, and was a "sufficient assurance to him, his heirs and assigns of such estate of inheritance or right, as he shall have in any such houses, lands or frank tenements."

The recorder above mentioned was the Clerk of the County Court, and in 1641 it was ordered that in every town a "Clerk of the writs" should be appointed who should record all births and deaths and annually deliver to the recorder or Clerk of the Court a transcript thereof. It was also ordered that every married man shall bring a certificate under hand of the Magistrate who married him, to the Clerk of the writs, to be recorded by him and returned to the court.

In 1647 and 1649 an act was passed defining and enlarging the jurisdiction of the Magistrates Court and providing that "any magistrate in the town where he dwells may hear and determine by his discretion (not by jury) according to the laws here established all cases

arising in that county wherein the debt, trespass or damage doth not exceed forty shillings, who may send for parties and witnesses by summons or attachment directed to the marshal or constable who shall faithfully execute the same. And it is further ordered that in such towns where no magistrate dwells, the Court of Assistants or County Courts may from time to time upon request of the said towns signified under the hand of the constable, appoint three of the freemen as commissioners in such cases, any two whereof shall have like power to hear and determine all such causes wherein either party is an inhabitant of that town, who have hereby power to send for parties and witnesses, by summons or attachment directed to the constable, as also to administer oaths to witnesses and to give time to the defendant to answer if they see cause; and if the party summoned refuse to give in his bond or appearance, or, sentenced, refuse to give satisfaction where no goods appear in the same town where the party dwells, they may charge the constable with the party to carry him before a magistrate or Shire Court (if then sitting) to be further proceeded with according to law, but the said commissioners may not commit to prison in any case. And when the parties live in several towns the defendant shall be liable to be sued in either town at the liberty of the plaintiff." It was also ordered "that in all small causes as aforesaid when only one magistrate dwells in the town and the cause concerns himself, as also in such towns where no magistrate is and the cause concerns any of the three commissioners, that in such cases the selectmen of the town shall have power to hear and determine the same, and also to grant execution for the levying and gathering up such damages for the use of the person damnified as one magistrate or three commissioners may do. And no debt or action

proper to the cognizance of one magistrate or the three commissioners as aforesaid shall be received into any County Court but by appeal from such magistrate or commissioners except in case of defamation or battery."

Selectmen were also authorized to try offences against the by-laws of their towns, where the penalty did not exceed twenty shillings, but not criminal offences.

In 1651, a law was passed applicable to Boston alone which provided "that there be seven freemen, resident in Boston, annually chosen by the freemen of the said town and presented to the Court of Assistants, who hereby have powers to authorize the seven freemen to be commissioners of the said town to act in things committed to their trust as is hereafter expressed, who shall from time to time be sworn before the said court, or the Governor, Deputy Governor or any two magistrates. And this court doth hereby give and grant commission and authority unto the said seven men, or any five of them or any three of them with one magistrate, to hear and determine all civil actions which shall be brought before them not exceeding the sum of ten pounds, arising within the neck of land on which the town is situate, as also on Noddle's Island, or betwixt any persons where both parties shall be inhabitants or residents within the said Neck or Noddle's Island aforesaid or where either party shall be an inhabitant or resident aforesaid; provided they keep a book of records for the entry of all causes, evidences, testimonies, sentences and judgments as the law provides in like cases; which said commissioners are authorized annually to appoint a Clerk of their Court and to demand and receive of every plaintiff in all cases or actions not exceeding forty shillings the sum of three shillings, and for all others the accustomed fees, and the said commissioners shall from time to time publish their court days

as the three commissioners in towns are bound to do." It was further provided that none should be appointed Commissioners "but such whose conversation is inoffensive and whose fidelity to the country is sufficiently known and approved of by the County Court." This law however continued in force only one year.

In May 1685, a Court of Chancery was established. The law under which it was organized provided as follows:

"Whereas, it is found by experience that in many cases and controversies betwixt parties, wherein there is matter of apparent equity, there hath been no way provided for relief against (the rigor of the common law,) but by application to the General Court, where, by reason of the weighty affairs of the country of more public concernment, particular persons have been delayed to their no small trouble and charge, and also great expense occasioned to the public by the long attendance of so many persons as that Court consists of, to hear and determine personal causes brought before them; for ease and redress whereof it is ordered and enacted by this Court that the magistrates of each County Court within this jurisdiction, being annually chosen by the freemen, be and hereby are authorized and empowered as a Court of Chancery, upon bill of complaint or information exhibited to them, containing matter of apparent equity, to grant summons or process, as in other cases is usual, briefly specifying the matter of complaint, to require the defendant's appearance at a day and place assigned by the Court to make answer thereunto, and also to grant summons for witnesses in behalf of either party, to examine parties and witnesses by interrogations upon oath, proper to the case, if the judges see cause to require it; and if any party being legally summoned shall refuse or neglect to make his appearance and answer, the case shall proceed to hearing and issue as is provided in cases at common law; and upon a full hearing and consideration of what shall be pleaded and presented as evi-

dence in any such case, the Court to make their decree and determination according to the rule of equity, *secundum equum et bonum*, and to grant execution thereon; provided always that either party, plaintiff or defendant, who shall find himself aggrieved at the determination of the said County Court shall have liberty to make his appeal to the magistrates of the next Court of Assistants, giving in security for prosecution and the reason of his appeal to the officers of the said County Court as the law provides in other cases, where the judges of the former Court may have liberty to allege and show the grounds and reasons of their determination, but shall not vote nor judge in the said Court of Assistants; and the judgment or decree of the said Court of Assistants shall be a full and final issue and determination of all such cases without any after review or appeal, unless upon application made by either party to the General Court, the said Court shall see meet to order a second hearing of the case at the County Court with liberty of appeal as aforesaid, or in any arduous and difficult cases to admit a hearing and determination by the General Court; and that a suitable oath be drawn up and agreed upon to be administered to those who shall be judges; and in all cases of this nature brought to the County Court, the party complaining before his bill be filed and process granted, shall give sufficient security to the Clerk of the Court to defray the necessary charge and attendance of Court."

Before dismissing the subject of the colonial judicial system this narrative should include the attempt of the home government to establish another tribunal. In 1664 Commissioners of Oyer and Terminer were appointed to visit the colonies and hear and determine all matters of complaint and to settle the peace of the country. The members of the commission were Col. Richard Nichols, Sir Robert Carr, George Cartwright and Samuel Maverick, any two of whom might form a quorum for the transaction of business. Richard Nich-

ols was the first English Governor of New York after its conquest by the English Colonies in 1664 and returned to England, whence he came, in 1667. Sir Robert Carr also came from England and returned to England, where he died in 1667. George Cartwright came from England and on his return in 1665 was captured by the Dutch. Samuel Maverick was the son of Rev. John Maverick of Dorchester. He was born in England about 1602, and going from Massachusetts to New York in 1665 there died. The attempt of the Commissioners to assume authority in July, 1664, was strongly resisted, and after a somewhat protracted controversy the attempt to establish the jurisdiction of the Court in Massachusetts was defeated.

Up to 1686 the judicial system as described remained ✓ practically unchanged, but it will be proper to mention some incidental matters relating to its conduct and practice which have not yet been alluded to. The executive officer of the court was at first called Beadle and afterwards Marshal. James Penn was appointed to the office September 25, 1634 and was succeeded by Edward Michelson who served many years. John Greene was appointed May 27, 1681 and Samuel Gookin in 1691.

The law concerning witnesses passed in May, 1667, provided "that no man shall be put to death without the testimony of two or three witnesses or that which is equivalent thereto," and "that any one magistrate or commissioner authorized thereunto by the General Court may take the testimony of any person of fourteen years of age or above of sound understanding and reputation in any case civil or criminal and shall keep the same in his own hands till the Court or deliver it to the recorder [clerk], public notary or clerk of the writs to be recorded that so nothing may be altered in it. Provided that when such witness shall have his abode within ten miles

of the Court and there living and not disenabled by sickness or other infirmity, the said testimony so taken out of Court shall not be received or made use of in the Court except the witnesses be also present to be further examined upon it, and provided also that in all capital cases all witnesses shall be present wheresoever they dwell." And it was ordered "that two shillings a day shall be accounted due satisfaction to any witness for travel and expenses; and that when the witness dwelleth within three miles and is not at charge to pass over any other ferry than betwixt Boston and Charlestown, then one shilling and six pence per diem shall be accounted sufficient."

Verdicts were sometimes rendered that there were strong grounds of suspicion but not evidence sufficient to convict, and upon such verdicts the court gave sentence for what appeared to them on the trial the defendant had been guilty of, although neither charged in the indictment nor found by the jury. Occasions arose when the Magistrates presiding in court refused to accept the verdict of the jury. In 1656 Anne Hibbins was tried for witchcraft and found guilty, but the Magistrates refused to acknowledge the decision of the jury. The case was carried to the General Court and she was convicted and executed. A law was passed in 1672 which put an end to all differences between Judge and jury, providing that after the court had explained the law to the jury and "compared the matters of fact proved therewith, the verdict should be accepted and judgment rendered thereon."

On the 18th of June, 1684, the colony charter was vacated and Charles the Second died in February, 1684-5.

On the 15th of May, 1686, Joseph Dudley received a commission from James the Second appointing him President of Massachusetts Bay, New Hampshire, Maine and

the Narragansett Country or the King's Province. The Plymouth Colony had no charter to be vacated, and for some unexplained reason it was not included in the jurisdiction of Dudley. That colony had always lived under the protection of the patent from the Council for New England and it so continued until after the short administration of Dudley Sir Edmund Andros was commissioned Governor of New England. Dudley, whose sketch has been given in the first chapter, was a member of the colony and an Assistant at the time of his appointment. William Stoughton, also an Assistant, was commissioned Deputy President, and a board of fifteen councillors, consisting of Robert Mason, Fitz John Winthrop, John Pinchon, Peter Bulkley, Edward Randolph, Waitstill Winthrop, Richard Wharton, John Usher, Bartholomew Gedney, Jonathan Tyng, John Hinckes, Edward Tyng, Nathaniel Saltonstall, Simon Bradstreet, Dudley Bradstreet and Francis Champenon. Of these Saltonstall and Simon and Dudley Bradstreet declined.

William Stoughton the Deputy President was born in Dorchester in 1631 or 1632 and graduated at Harvard in 1650. He was first a clergyman, afterwards an Assistant from 1671 to 1676, an agent of the Massachusetts Colony in England in 1677, Chief Justice of the Superior Court from 1692 to 1701, member of the Council from 1693 to 1701, Lieutenant Governor from 1692 to 1701, and at various times a Selectman in Dorchester. He died July 7, 1701.

Of the councillors Robert Mason was afterwards a Judge under Andros and lived in Portsmouth where he died in 1686. John Pynchon was born in England in 1625, and came to Massachusetts in 1648 and settled in Springfield. He was son of William Pynchon and was a deputy in 1659-62, 63, and Assistant from 1665 to

1686. He was one of the founders of Northampton and died January 17, 1703. Peter Bulkley was son of Rev. Peter Bulkley and was born in Concord, Mass., August 12, 1643. He graduated at Harvard in 1660 and was Speaker of the House from May 19, 1669 to May 31, 1671, and again from May 17, 1672 to May 7, 1673. He was also an Assistant from 1667 to 1684 and died at Concord in May, 1688. Edward Randolph was appointed Colonial Secretary in September, 1685, and Judge of the Pleas and Sessions by President Dudley July 27, 1686. Waitstill Winthrop, son of John Winthrop the Governor of Connecticut, and grandson of Governor John Winthrop of the Massachusetts Colony, was born in Boston, February 27, 1642, and was appointed Judge of the Superior Court of Judicature, December 23, 1692, and Chief Justice in 1701, resigning the same year. He was again appointed Chief Justice in 1708 and died in Boston, November 7, 1717. Richard Wharton was appointed Judge of the Pleas and Sessions by President Dudley, July 27, 1686. John Usher, son of Hezekiah, was born in Boston in April, 1648 and appointed Judge of the Pleas and Sessions by Dudley, July 27, 1686. Bartholomew Gedney was a physician of Salem, and born in 1640. He was an Assistant from 1680 to 1683, and was appointed in 1692 one of the Judges to try witchcraft cases. In the same year he was appointed Judge of Probate for Essex County and Judge of the Inferior Court. He died February 28, 1698-9. Jonathan Tyng was son of Edmund Tyng and born in Boston in 1642. John Hinks was of Portsmouth and came from England about 1670. He was living at Newcastle, N. H., in 1722 and died before April, 1734. Though the appointment of Dudley was a disturbing event in the colony, it was on the whole a relief, as it had been determined by King Charles before his death to appoint Col. Percy Kirk, an

exceedingly objectionable man, as Governor of the Province with the title of "His Majesty's Lieutenant and Governor General."

The career of Dudley was short, expiring with the arrival of Sir Edmund Andros, December 19, 1686, with a commission as Governor of New England. But it was sufficiently long to enable him to change the judicial affairs of the colony. The Governor and Council were made a Court of Record for the trial of civil and criminal causes and were invested with authority to establish courts and appoint judges. A Superior Court composed of a majority of the Councillors was ordered with three sessions a year at Boston, and Courts of Pleas and Sessions of the Peace, were organized in the several counties. At that time Hampshire had been added to the list of counties, having been incorporated May 7, 1662, and the old county of Norfolk had been extinguished when New Hampshire was made a Royal Province in 1679. William Stoughton was appointed to preside in the County Courts of Suffolk, Middlesex and Essex with John Richards and Simon Lynde as Assistants. The President assumed probate jurisdiction as Supreme Ordinary with power to appoint Judges of Probate and Clerks in the counties as he saw fit. Benjamin Bullivant was appointed Attorney General,—a physician and apothecary who knew apparently nothing of courts and rules of practice. The executive officer of the court was called Provost Marshal, a title afterwards under Andros changed, to Sheriff. Benjamin Bullivant, Giles Masters, Anthony Checkley, John Watson, Nathaniel Thomas and Christopher Webb were admitted and sworn as Attorneys. Bullivant was also appointed November 2, 1686, Clerk of the Superior Court, Daniel Allen and Thomas Dudley were made

Clerks of Suffolk, and John Winchcomb and Nathaniel Page, Marshals.

Aside from the statutes enacted by the General Court the common law of England was all through the life of the colony the guide in judicial proceedings. Familiarity with that law was necessarily limited. Few of the Judges or Attorneys were educated in the law. Among the practitioners in addition to those already mentioned were John Coggan, a merchant and Amos Richardson a tailor. The Superior Court was to hold special terms of Oyer and Terminer, composed of the President, Deputy President and members of the Council.

Sir Edmund Andros holding a commission from James the Second as Governor of New England arrived in Boston, December 19, 1686. He was born in London, December 6, 1637, and in 1674 was appointed Governor of the Province of New York by the Duke of York and continued in that office until 1681. After his deposition from the governorship of New England on the accession of William and Mary he was appointed, in 1692, Governor of Virginia and remained until 1698. From 1704 to 1706 he was Governor of the Island of Jersey and died in London, February 24, 1714.

The jurisdiction of Andros included the Plymouth Colony as well as the other colonies which were included in that of Dudley. He appointed thirty-nine councillors, and delegated the power of making and executing the laws to the Governor and Council subject to the approval of the crown. The councillors in addition to those already mentioned as the incumbents under Dudley were Thomas Hinckley, Barnabas Lothrop, William Bradford, Daniel Smith, James Walley, Nathaniel Clark, John Coggshall, Walter Clark, Walter Newberry, John Sanford, John Greene, Richard

Arnold, John Albro, Francis Nicholson, Robert Treat, John Allyn, Samuel Shrimpton, William Browne, Richard Smith, Simon Lynde, Anthony Brockholst, Frederick Phillips, Jarvis Baxter, Stephen Van Courtlandt, John Young, Nicholas Bayard, John Palmer and John Sprague.

He established the Quarterly Sessions Court held by the several justices in their respective counties, and an Inferior Court of Common Pleas to be held in each county by a Judge assisted by two or more Justices of the county, with a limitation of jurisdiction in Boston to twenty pounds where the court was to sit once in two months, and in other counties to ten pounds where it was to sit annually. He also established a Superior Court of Judicature in which no action could be begun involving less than ten pounds, unless it related to a question of freehold, which court was to be held in Boston, Cambridge, Charlestown, Plymouth, Bristol, Newport, Salem, Ipswich, Portsmouth, Falmouth (Portland), Northampton and Springfield. Joseph Dudley was appointed Chief Justice and at various times the Associate Judges were William Stoughton, Peter Bulkley, Samuel Shrimpton, Simon Lynde, Charles Lidget, John West and John Usher. George Farwell was made Attorney General and clerk of the Superior Court, and James Sherlock was made Sheriff. A Court of Chancery and special courts of Oyer and Terminer were provided for, and jurisdiction was given to Justices of the Peace in civil causes not affecting land nor involving a sum exceeding forty shillings.

From the Governor and Council and from the Chancery Court appeals could be had to the crown in causes involving more than three hundred pounds sterling. Under the administration of Andros writs were directed to Sheriffs, but an ineffectual attempt to change the di-

rection of the writs was successfully resisted. In June, 1688, Sir William Phipps was commissioned Provost General of New England and called on Andros to discharge the Sheriffs and have the writs directed to the Provost Marshal or his Deputy, which Andros refused to do. It has been said that an attempt was made to assassinate Phipps and that on this account he returned to England leaving Andros in supreme and undisturbed control.

Andros succeeded in making himself thoroughly unpopular by his despotic methods of administering the affairs of his jurisdiction. He declared all public lands vested in the crown, and thus for a time towns incumbered themselves with a heavy burden of expense in defending their possessions, and those acting in their defence were arrested and imprisoned. He claimed the right to assess taxes on the several towns and those who advised resistance to the claim were arrested and imprisoned in the jail in Boston.

During the career of Andros the number of attorneys increased, but they belonged to the same class as those already mentioned. Thomas Newton, King Hayman and others equally ignorant of the law were admitted to practice. Edward Randolph wrote to Mr. John Povey in 1687-8: "I have wrote you of the want we have of two or three honest attorneys (if any such thing in nature) we have but two, one is West's creature, come with him from New York and drives all before him."

But fortunately for New England the administration of Andros was destined to a speedy termination. When the news of the English revolution and of the accession of William and Mary reached Boston, Andros was arrested and sent to England with some of his more active and subservient councillors. Among these was Nathan-

iel Clark of Plymouth, who had made himself especially obnoxious to the people of that town on account of his successful application to Andros for a grant of Clark's Island which had always been a possession of the town. Clark was son of Thomas Clark, who came in the *Ann* in 1623, and whose gravestone is now standing on Burial Hill in Plymouth. He succeeded Nathaniel Morton as Secretary of Plymouth Colony in 1685, and died in Plymouth in 1717.

After the departure of Andros, Simon Bradstreet, the colonial Governor in office before Dudley became President, resumed his office April 18, 1689, a new House of Deputies was chosen, and the administration of affairs was again conducted as before the revocation of the charter. The court of Assistants, which had held its last session April 15, 1686, resumed its sessions in December, 1689, and Anthony Checkly was chosen Attorney General and John Greene, Marshal General of the colony. The County Courts also resumed their sessions, and no further changes in the judicial system occurred during the colonial period. A new charter embracing the Plymouth Colony, the Massachusetts Colony, Maine, Nova Scotia and the intervening territory in a government by the name of the "Province of the Massachusetts Bay in New England" passed the seals on the 7th of March, 1691, and reaching Boston May 14, 1692, at that date terminated the life of the Massachusetts Colony.

CHAPTER III.

PROVINCE OF THE MASSACHUSETTS BAY.

Before entering on the judicial career of the province it will be proper to make the explanatory statement that the provincial charter included the islands of Nantucket and Martha's Vineyard, which had been previously within the jurisdiction of New York. The former became a county under the name of "Nantucket County" June 22, 1695, and the latter at the same date as the "County of Dukes County." Sir William Phipps, the governor appointed by the Crown, arrived with the charter in Boston May 14, 1692, and after the oath of office had been administered the General Court appointed "a day of solemn thanksgiving to Almighty God for granting a safe arrival of His Excellency, our Governor, and the Rev. Increase Mather, who have industriously endeavored the service of the people and have brought over with them a settlement of Government in which their majesties have graciously given us distinguishing marks of their royal favor and goodness."

The full text of the charter will be found in the appendix marked "E."

The issue of the charter marked the termination of a struggle, which was far from satisfactory to either of the parties concerned in it. The Massachusetts Colony through its agents, Increase Mather and others, sought a charter perpetuating its ancient liberties enjoyed under the charter vacated in 1684. The Plymouth Colony sought a charter for itself alone; and the Governor

of New York, within whose jurisdiction Nantucket and Martha's Vineyard had up to that time been included, sought not only to retain those islands but to have also the Plymouth Colony added to his jurisdiction. New York and the Plymouth Colony were disappointed in the division of territory and both the Plymouth and Massachusetts Colonies were grievously disappointed in the nature of the franchise which the charter granted. Both colonies had been practically enjoying the blessings of free and independent commonwealths, choosing their own officers and making their own laws, and now they were to be subjected like a conquered people to the authority of the crown. There were, however, a few features in the new charter more satisfactory than some in the old. The religious element was eliminated in the election of freemen and the power to raise money and levy taxes given to the General Court seemed to be a partial bulwark against royal usurpations. Had the constituent elements of the province been the same as those of the colony, the provisions of the charter would have seemed intolerable, but owing to large immigration from England there was an extensive feeling of loyalty to monarchical institutions which felt no shock at the innovation contemplated by that instrument.

There was one provision in the charter which gave unalloyed satisfaction, that relating to the titles of public lands. Andros had declared all such titles vested in the crown and that holders of estates must present themselves and prove their titles. The charter provided "that all such lands, tenements and hereditaments, and all other estates which any person or persons, politic or corporate, towns, villages, colleges or schools do hold and enjoy, or ought to hold or enjoy, by or under any grant or estate duly made, or granted by any General Court, or by any other lawful right or title whatsoever,

shall be by them, their heirs and assigns peacefully held according to the tenure of their grants."

Besides the Governor, Lieutenant Governor and Secretary a provisional board of Councillors was appointed, consisting of Simon Bradstreet, John Richards, Nathaniel Saltonstall, Wait Winthrop, John Phillips, James Burrell, Samuel Sewall, Samuel Appleton, Bartholomew Gedney, John Hathorne, Elisha Hutchinson, Robert Pike, Jonathan Corwin, John Joliffe, Adam Winthrop, Richard Middlecot, John Foster, Peter Sergeant, John Lynde, Samuel Heyman, Stephen Mason, Thomas Hinckley, William Bradford 2d, John Walley, Barnabas Lothrop, Job Alcot, Samuel Daniel and Sylvanus Davis.

The first General Court under the charter met on the 8th of June, 1692, but previous to that time Governor Phipps, without any authority conferred by the charter, issued commissions on the 2d of June for a special court of Oyer and Terminer to try those persons who had been charged with witchcraft. The members of the court were William Stoughton, Chief Justice, and Nathaniel Saltonstall, John Richards, Bartholomew Gedney, Wait Winthrop, Samuel Sewall and Peter Sergeant, Associate Justices. Mr. Saltonstall declined and Jonathan Corwin was appointed in his place. Stephen Sewall was appointed clerk, Thomas Newton, their majesties' attorney, Anthony Checkley, Attorney General, and George Corwin, Sheriff. The instructions of the Attorney General were "to inquire of, hear and determine for this time, all and all manner of felonies, witchcraft, crimes and offences; how, or by whomsoever done, committed or perpetrated, within the several counties of Suffolk, Essex and Middlesex."

Of these judges a sketch of Stoughton has been already given. John Richards, son of Thomas, was born in

England and came to Massachusetts with his father in 1630. He was a merchant, and Treasurer of Harvard College from 1669 to 1682 and from 1686 to 1693. He was a Deputy from Newbury from 1671 to 1673 and from Hadley in 1675 and from Boston in 1679-80, and Speaker of the House in the last two years. He was an Assistant from 1680 to 1686 and Judge of the Superior Court of Judicature from 1692 to 1694 in which last year he died on the 2d of April. Bartholomew Gedney was a physician in Salem and was born in 1640. He was an Assistant from 1680 to 1683 and a member of the Councils of Dudley and Andros. In 1692 he was appointed Judge of Probate for Essex County and Judge of the Inferior Court of that county. He died February 28, 1698-9. Wait Winthrop has already been noticed. Samuel Sewall, son of Henry came from England in 1661 at nine years of age and graduated at Harvard in 1671. He studied divinity but had no settlement. He was an Assistant from 1684 to 1686 and again in 1692. Under the provincial government he was a member of the Council many years, and on the organization of the Superior Court of Judicature he was made one of the Judges and in 1718 Chief Justice, serving until 1728, when he resigned both that position and that of Judge of Probate for Suffolk County, which he had held since 1715. He died in January, 1730. Sewall, in the opinion of Washburn, was among the most learned, pious and honest men in the province, possessing purity of heart and magnanimity of spirit. With this characterization the writer cannot agree, impressed as he is with the conviction that he, Sewall, was a narrow, bitter and unrelenting theologian to whom can be accorded only the justification and defence which the inquisition of Spain might have claimed. Peter Sergeant was probably a Boston merchant. He was one of the

Council of the province until 1703 when his election was negatived by Governor Dudley. He was appointed Judge of the Suffolk Inferior Court March 3, 1693, from which position he was removed by Dudley in 1702. Jonathan Corwin was born in Salem in 1640 and in 1692 was appointed Judge of the Essex Inferior Court and continued on that bench until he was appointed Judge of the Superior Court of Judicature in 1708. In 1715 he resigned, and died in June, 1718.

The court sat at various times between the 2d of June and the 17th of September and condemned nineteen persons to be hung and one to be pressed to death. Not a single lawyer was connected with the court. Two of the Judges were clergymen, two physicians, two merchants, as was also the Attorney General.

It may not be out of place to interpose some defence of a court upon which so much obloquy has been cast, as if it was specially infected with a delusion which seems to us so abhorrent. The fact is that a belief in witchcraft was universal, founded as it was on the conviction that the Bible was the inspired word of God. Theologians especially were convinced of its existence, and it is probable that to Stoughton and Sewall, the clergymen on the bench, the convictions and punishments were due. In the 18th verse of the 22d chapter of Exodus we find the command: "Thou shalt not suffer a witch to live." In the 27th verse of the 20th chapter of Leviticus are these words: "A man also, or a woman, that hath a familiar spirit; or that is a wizard, shall surely be put to death; they shall stone him with stones; their blood shall be upon them," and in the 18th chapter of Deuteronomy, the 10th, 11th and 12th verses, it is written: "There shall not be found among you any one that maketh his son or his daughter to pass through the fire, or that useth divination, or an

observer of times, or an enchanter, or a witch, or a charmer, or a consulter with familiar spirits, or a wizard, or a necromancer, for all that do these things are an abomination unto the Lord, and because of these abominations the Lord thy God doth drive them out from before thee." It is probable that the victims of the delusion were as firm in their belief as any and would acknowledge, while denying their own guilt, that those who were guilty should die. We cannot deny that in our own time delusions as great, though not as cruel in their results, are abroad without even the Scriptures to justify them.

There were two omissions or rather two points not made sufficiently clear in the charter which seemed to render an explanatory charter necessary. Such a charter was issued by George the First, dated August 26, 1725. That charter provided that the House of Deputies, or Representatives, might choose a speaker who should be approved by the Governor or Lieutenant Governor or Commander in Chief, and that the General Court might adjourn from day to day for the space of two days and not longer without the consent of either of those officials. The text of this charter will be found in the appendix marked F.

The first act passed by the Provincial General Court relating to the courts was enacted June 28, 1692, and published on the second of July, as follows :

“ An Act for the holding of Courts of Justice.

“ Forasmuch as the orderly regulation and well establishment of Courts of Justice is of great concernment, and the public occasions with reference to the war, and otherwise being so pressing at this season that the Court cannot now conveniently set longer to advise upon and fully settle the same, but to the intent that justice be not obstructed or delayed.

“Be it ordained and enacted by the Governor, Council and Representatives, convened in general assembly, and it is ordained by authority of the same.

“Sec. 1. That on or before the last Tuesday, in July next there be a general sessions of the peace held and kept in each respective county within the province, by the Justices of the same county, or three of them at least (the first Justice of the quorum then present to preside) who are empowered to hear and determine all matters relating to the conservation of the peace, and whatsoever is by them cognizable according to law, and to grant licenses to such persons within the same county, being first approved of by the Selectmen of each town where such persons dwell, whom they shall think fit to be employed as innholders or retailers of wines or strong liquors, and that sessions of the peace be successively held and kept as aforesaid within the several counties at the same times and places as the County Courts or Inferior Courts of Common Pleas are hereafter appointed to be kept.

“And it is further enacted by the authority aforesaid :

“Sec. 2. That the County Courts or Superior Courts of Common Pleas and kept in each respective county by the Justices of the same county or three of them at least (the first Justice of the quorum then present to preside) at the same times and places they have been formerly kept according to law, for the hearing and determining of all civil actions arising or happening within the same, triable at the common law according to former usage: the Justices for holding and keeping of the said court within the county of Suffolk to be particularly appointed and commissioned by the Governor with the advice and consent of the Council, and that all writs or attachments shall issue out of the clerk's office of the said several courts, signed by the clerk of such court, directed unto the Sheriff of the county, his under Sheriff or Deputy. The jurors to serve at said courts to be chosen according to former custom, by and of the freeholders and other inhabitants qualified as is directed in their

Majesty's royal charter. This act to continue until other provision be made by the General Court or Assembly."

This act was disallowed by the Privy Council on the 22d of August, 1695, because a distinction was made in the manner of appointing Justices between the county of Suffolk and other counties.

Before the passage of the above act, June, 1692, it was ordered that all local laws made by the Governor and Company of Massachusetts Bay (Massachusetts Colony) and the government of New Plymouth not repugnant to the laws of England "nor inconsistent with the present constitution and settlement by their Majesty's charter to remain and continue in full force in the respective places for which they were made and used, until the 10th day of November next, except in cases where other provision is or shall be made by this court or assembly; and all persons are required to conform themselves accordingly; and the several Justices are hereby empowered to the execution of said laws as the magistrates formerly were."

On the 25th of November, 1692, at the second session of the General Court an act was passed providing,

"Sec. 1. That all manner of debts, trespass and other matters not exceeding the value of forty shillings (wherein the title of land is not concerned) shall and may be heard, tried, adjudged and determined by any of their Majesty's Justices of the peace of this province, within the respective counties where he resides, who is hereby empowered upon complaint made, to grant a warrant or summons against the party complained of seven days before the day of trial or hearing, thereby requiring him or them to appear and answer the said complaint, and in case of nonappearance to issue out a warrant of contempt directed to the Constable or other officers to bring the contemner before him, as well to

answer the said contempt, as the plaintiffs' action, and if he sees cause to fine the said contemner.

“Be it further enacted and ordained by the authority aforesaid :

“Sec. 2. That there shall be held and kept in each respective county, within the province, yearly at the times and places hereafter named and expressed, four Courts or Quarter Sessions of the peace by Justices of the peace of the same county who are hereby empowered to hear and determine all matters relating to the conservation of the peace and punishment of offenders, and whatsoever is by them cognizable according to law, that is to say, for the county of Suffolk at Boston on the first Tuesdays in March, June, September and December; for the county of Plymouth at Plymouth on the third Tuesdays in March, June, September and December; for the county of Essex at Salem on the last Tuesdays in June and December; at Ipswich on the last Tuesday in March, and at Newbury on the last Tuesday in September; for the county of Middlesex at Charlestown on the second Tuesdays in March and December; at Cambridge on the second Tuesday in September and at Concord on the second Tuesday in June; for the county of Barnstable at Barnstable on the first Tuesdays in April, July, October and January; for the county of Bristol at Bristol on the second Tuesdays in April, July, October and January; for the county of York at York on the first Tuesdays in April and July, and at Wells on the first Tuesdays in October and January; for the county of Hampshire at Northampton on the first Tuesdays in March and June; at Springfield on the last Tuesdays in September and December; and that there be a general sessions of the peace held and kept at Edgartown upon the island of Capawack alias Martha's Vineyard and on the Island of Nantucket respectively on the last Tuesday in March and on the first Tuesday in October.

“And it is further enacted by the authority aforesaid :

“Sec. 3. That at the times and places before mentioned there shall be held and kept in each respective county and

islands before named within the province, an Inferior Court of Common Pleas by four of the Justices of and residing within the same county and islands respectively to be appointed and commissioned thereto, any three of whom to be a quorum, for the hearing and determining of all civil actions arising or happening within the same, triable at the common law of what nature, kind or quality soever.

“ And it is further enacted by the authority aforesaid :

“ Sec. 4. That there shall be a Superior Court of Judicature over the whole province, to be held and kept annually at the respective times and places hereafter mentioned, by one Chief Justice and four other Justices to be appointed and commissioned for the same, three of whom to be a quorum, who shall have cognizance of all pleas, real, personal and mixed, as well in all pleas of the crown and in all matters relating to the conservation of the peace, and punishment of offenders, as in civil causes of actions between party and party and between their majesties and any of their subjects, whether the same do concern the realty and relate to any right of freehold and inheritance, or whether the same do concern the personalty, and relate to matter of debt, contract, damage, or personal injury, and also in all mixed actions which may concern both realty and personalty, and after deliberate hearing to give judgment and award execution thereon. The said Superior Court to be held and kept at the times and places within the respective counties following: that is to say, within the county of Suffolk at Boston on the last Tuesdays of April and October; within the county of Middlesex at Charlestown on the last Tuesdays of July and January; within the county of Essex at Salem on the second Tuesday of November and at Ipswich on the second Tuesday of May; within the counties of Plymouth, Barnstable and Bristol at Plymouth on the last Tuesday of February, and at Bristol on the last Tuesday of August.

“ Sec. 5. That the trial of all civil causes by appeal or writ of error from any of the Inferior Courts within the respective counties of York or Hampshire, the Islands of

Capawack, alias Martha's Vineyard and Nantucket, shall be in the Superior Court to be held in Boston or Charlestown.

“And it is hereby further enacted by the authority aforesaid :

“Sec. 12. That there be a high Court of Chancery within the province who shall have power and authority to hear and determine all matters of equity, of what nature, kind or quality soever, and all controversies disputes and differences arising betwixt coexecutors, and other matters proper and cognizable to said court, not reviewable at common law ; the said court to be holden and kept by the Governor or such other as he shall appoint to be chancellor assisted with eight or more of the Council, who may appoint all necessary officers to the said court ; which said court shall sit and be held at such times and places as the Governor or chancellor for the time being shall from time to time appoint ; provided, nevertheless, that the Justices in any of the courts aforesaid when the forfeiture of any penal bond is found, shall be and are hereby empowered to chancer the same unto the just debt and damages.”

This act also was disallowed by the Privy Council on the 22d of August, 1695, because the provision of the act that either party not being satisfied with the judgment of any of the courts in personal actions and exceeding £300, may appeal to His Majesty in Council, seemed to exclude the right of appeal in real actions.

On the 9th of November, 1692, an act was passed, providing “Whereas at the session of the court in June last, an act was passed, entitled ‘an act for continuing the local laws to stand in force till November the 10th, 1692,’ it is ordained and enacted that the said act and every part of it be and hereby is revived and continued in full force to all intents and purposes, from and after the said tenth day of November, and shall so continue until the General Assembly shall take further order.”

On the 11th of December, 1693, an act was passed in addition to the "act for establishing of Judicatures and Courts of Justice within the province," which, among other things pertaining to forms and rules of courts, changed the time for holding the Court of Quarter Sessions, and the Inferior Court of Common Pleas in Boston to the first Tuesdays in July, October, January and April, and provided that there be a Court of Judicature, Court of Assize and General Gaol Delivery held at Kittery, in the county of York, on Wednesday before the second Tuesday in May, and at Springfield on the last Tuesday in June. This act was also disallowed by the Privy Council on the 10th of December, 1696, because the act to which it was in addition had been disallowed.

An act was also passed December 5, 1693, providing for a new establishment and regulation of the Chancery Court, but as this act was chiefly amendatory of the act establishing Judicatures, passed November 25, 1692, it was disallowed because that act had been.

Acts were passed February 15, 1693-4, and March 2, 1693-4, changing the times for holding the Superior Court, but they are of no importance in this narrative.

The first Judges of the Superior Court of Judicature were appointed in 1692, and were William Stoughton, Chief Justice, and Thomas Danforth, Wait Winthrop, John Richards and Samuel Sewall. All of these, except Thomas Danforth, have been already noticed.

Judge Danforth, son of Nicholas, was born in England in 1622. He was an Assistant from 1659 to 1678, Deputy Governor from 1679 to 1686, and continued on the bench of the Superior Court until his death, November 5, 1699. In 1695 all the old judges, except Richards, who had died April 2, 1694, were reappointed, and Elisha Cooke was appointed in the place of Richards.

Judge Cooke was a physician, and was born in Boston, September 16, 1637. He graduated at Harvard in 1657, and died May 31, 1715.

The reappointment of the judges in 1695, was rendered necessary by the disallowance of the law establishing courts under which they were appointed in 1692, and not on account of the death of Governor Phipps, as supposed by Judge Washburn in his *Judicial History*, which had occurred on the 18th of the previous February.

On account of the disallowance of the court law of 1692, an act was passed intended to meet the objections raised by the Privy Council, of which the following are the preamble and first section :

“Whereas his Majesties’ pleasure hath been signified for the repealing and making void an act made and passed by the Great and General Court or Assembly anno one thousand six hundred ninety-two, in the fourth year of the reign of his present majesty and the late Queen Mary, his royal consort of blessed memory, entitled “An act for the establishing of Judicatures and Courts of Justice within this province,” also for the repealing and making void another act entitled “An act for the establishing of precedents and forms of writs and processes with the particular reasons of his Majesties’ disallowance of said acts for the information and direction of the General Assembly, and the amendments and considerations, necessary for the supply thereof; and whereas it is absolutely necessary that speedy provision be made, that his Majesties’ subjects may not suffer for the want of due course of justice.

“Be it enacted, etc. :

“Sec. 1. That the before mentioned act entitled ‘an act for the establishing of Judicatures and Courts of Justice within this province,’ and all and singular the paragraphs, articles, clauses and sentences thereof (except the paragraph

for constituting a Court of Chancery and such other articles, clauses and sentences in said act as have been heretofore repealed, altered or otherwise provided for, in and by any other act or acts of the General Assembly of this province, or which in and by the present act shall be altered, otherwise provided for or declared to be null and void) be and hereby are revived and continued to abide and remain in full force and virtue until the end of the first session of the General Assembly to be begun and held upon the last Wednesday of the month of May next, in the year of our Lord one thousand six hundred ninety-seven, and no longer; provided, nevertheless, that the words (and no other) in the section or paragraph of the said act, providing for liberty of appeal unto his Majesty or Council be and hereby are declared void and of no effect."

This act also was disallowed by the Privy Council on the 24th of November, 1698, notwithstanding the objectionable part of the act which had been disallowed was removed, for the reason that the act which it revived had been disallowed. Before the disallowance of this revival act another act was passed on the 19th of June, for the establishment of courts very similar to the act of 1692, with the name of the Quarter Sessions of the Peace changed to a court of General Sessions of the Peace and the omission of the provision for the Chancery Court.

This act also was disallowed November 24, 1698, because the provision "among other things that all matters and issues in fact shall be tried by a jury of twelve men was contrary to the intention of an act of parliament entitled an act to prevent frauds and regulating abuses in the plantation trade, by which it was provided that all causes relating to the breach of the acts of trade may, at the pleasure of the officer or informer, be tried in the Court of Admiralty, to be held in any of his Ma-

jesty's Plantations, respectively where such offence shall be committed ; because the method of trial in such Courts of Admiralty is not by juries of twelve men, as by the forementioned act for establishing of courts is directed."

An order was received on the 26th of April, 1699, disallowing the Court Act of 1696, while the court was in session. On the 27th the Judges went into court and after announcing the disallowance, dissolved the court. On the 26th of May, Governor Bellomont arrived in Boston as the successor of Governor Phipps, and on the 2d of June announced to the General Court the disallowance and recommended the revival of the courts by such an act as the Privy Council would approve.

Richard Coote, Earl of Bellomont, succeeded Lieutenant Governor Stoughton, who had been acting Governor since the death of Governor Phipps, reaching New York in the summer of 1698, bearing a commission which constituted him Governor of the Province of New York, and of New Jersey and New Hampshire as well as of Massachusetts. He came to Boston shortly after his arrival, remaining about a year, during which he sought to reconcile the differences between the province and the Privy Council.

Finally at the session of the General Court which began on the 31st of May, 1699, three acts were passed establishing courts which were approved by the King in Council and were published on the 27th of June. On the 25th of July the former Judges composing the Superior Court were reappointed and commissioned.

The first of the three acts established a Court of General Sessions of the Peace, to be held by the Justices of the Peace in each county with a jurisdiction over matters relating to the conservation of the peace and the punishment of offenders, from which an appeal might

be taken to the Superior Court of Judicature. The second established an Inferior Court of Common Pleas to be held in each county by four persons to be appointed as Justices and to take cognizance of all civil actions within the county triable at common law. The third established a Superior Court of Judicature for the province, to be held by one Chief Justice and four Associate Justices and have cognizance of all pleas, real, personal or mixed, as well as all pleas of the crown and all matters relating to the conservation of the peace and punishment of offenders, as civil causes or actions, and also all mixed actions which concern both realty and personalty brought before them by appeal, service, writ of error or otherwise, and generally of all other matters as fully as the Court of King's Bench, Common Pleas and Exchequer ought to have. Times and places for holding this court were specified for all the counties except Barnstable, Nantucket and Dukes County. For Barnstable and Dukes sessions were to be held at Plymouth. For Nantucket trials for capital offences were to be held on the island, but appeals or writs of error from the Court of General Sessions of the Peace and Inferior Court of Common Pleas were to be heard in Suffolk or Middlesex.

Among the acts which were soon after passed was an extraordinary one which plainly manifested a lenient spirit towards debtors. It provided "that it shall be the liberty of the party aggrieved, at any judgment given in any Inferior Court of Common Pleas within this province to appeal therefrom unto the next Superior Court of Judicature, Court of Assize and General Gaol Delivery to be held within or for the same county; and upon judgment given at said Superior Court of Judicature upon such appeal, it shall be lawful for either party, appellant or defendant to review such

action by process out of the said Superior Court or otherwise, the party aggrieved at any judgment given in any Inferior Court of Common Pleas may by a new process review said case in the same court where it was first tried; and after judgment given upon such trial by review, the party aggrieved at the same judgment may appeal therefrom unto the next Superior Court of Judicature to be holden for or within the same county, or may bring his writ of error for a new trial of the said case in the said Superior Court of Judicature; and in all cases wherein the plaintiff or defendant shall have obtained the number of three judgments it shall be a final issue and determination of such case; and every action of review shall be brought within the space of three years; and no civil action shall be originally brought into the Superior Court of Judicature, unless in cases where the King is concerned."

The act was disallowed by the Privy Council, October 22, 1700, because its provision "giving liberty for three trials before sentence or judgment in any case be final or conclusive and between each trial allowing a liberty of three years suspense was dilatory and vexatious." In consequence of this disallowance another act was passed in 1701 providing for one appeal from the Inferior Court of Common Pleas to the Superior Court of Judicature, and one review in each court, and permitting a review to be brought at any time within three years after judgment.

At a later date in 1754 an act was passed providing that where a party has recovered judgment on two trials no review shall be allowed, and in 1757 the right of review was restricted to the Superior Court of Judicature.

It has been stated in the second chapter that under the colonial charter matters relating to the probate of wills and the administration of estates of deceased persons

were within the jurisdiction of the County Court. This jurisdiction was disturbed during the administrations of Dudley and Andros but after the overthrow of Andros the old method was resumed and continued until the province charter went into operation. By that charter probate affairs were placed in the hands of the Governor and Council who claimed and exercised the right to appoint Judges and Registers of Probate in the various counties. These county probate officers with their incumbents and the laws relating to them will be hereafter considered.

The charter provided, it will be remembered, that the exercise of admiralty jurisdiction was reserved to the crown, to be granted by virtue of commissions issued under the great seal of England or under the seal of the High Admiral or the commissioners for executing the office of High Admiral of England. The colonies were divided into admiralty districts over which Judges of Admiralty were appointed with power to appoint Deputies. The Northern district at first included New York, Massachusetts, Connecticut, Rhode Island and New Hampshire with the addition afterwards of New Jersey. New York, New Jersey and Connecticut were afterwards withdrawn and from 1703 to 1767 the district continued unchanged, being made at the latter date to include all New England. Under the colonial charter admiralty jurisdiction was exercised by the Court of Assistants who were authorized under a law passed in 1673 to hear and try causes without a jury. Under the reservation clause of the province charter Governor Phipps exercised admiralty jurisdiction until 1694, in which year upon a representation and complaint in regard to the manner of his administering his admiralty functions a Court of Vice Admiralty was created consisting of one judge, a King's Advocate, a Register and a Marshal.

The jurisdiction of the court extended to breaches of the acts of trade and trials were held without juries, appeals being allowed to the Court of Delegates in England. Besides the Court of Vice Admiralty, a Judiciary Court of Admiralty was established for the trial of piracies and other offences on the high seas. This court generally consisted of the Governor, the Council, the Judge of Vice Admiralty, the Captain of the King's ships of war in the station, the Surveyor of the Customs and the Collector of Boston. Sometimes special courts were constituted for trials variously composed.

In 1764 Dr. William Spry was appointed Judge of Admiralty over all America, and after reaching Halifax issued a proclamation naming certain days for holding court in that place. In 1767 he was appointed Governor of Barbadoes, where he died in 1772.

The first Judge of Admiralty was Wait or Waitstill Winthrop, who has already been noticed. He was appointed in 1699, and his jurisdiction covered New York, Massachusetts, Connecticut, Rhode Island and New Hampshire. William Atwood succeeded Judge Winthrop, and was appointed October 28, 1701. His district was the same as that of Winthrop, with New Jersey added, and Thomas Newton was his Deputy. In April, 1703, Roger Mompesson was appointed, and after the division of the district in that year, Nathaniel Byfield, who had been Deputy Judge, was appointed Judge of the district covering Massachusetts, New Hampshire and Rhode Island. John Menzies, a native of Scotland, came to Boston December 24, 1715, bearing his commission as the successor of Byfield. He was a member of the General Court in 1721, and died in Boston, September 20, 1728. On the 25th of November, 1728, Nathaniel Byfield was again appointed

Judge with a jurisdiction over Rhode Island, Massachusetts and New Hampshire, and appointed Nathaniel Hubbard his Deputy for the county of Bristol, and the province of Rhode Island. Judge Byfield was born in England in 1653, and was the son of Richard Byfield, one of the Westminster Assembly. He came to Boston in 1674, and about 1680 settled in Bristol, and in 1685 was appointed Chief Justice of the Court of Common Pleas for Bristol County. He was speaker of the House of Representatives in 1693. In 1702 he was appointed Judge of Probate for Bristol County, and continued in office until 1710. In 1731 he removed to Boston and was appointed by Governor Belcher, Chief Justice of the Court of Common Pleas for Suffolk County. He died in 1733. Robert Auchmuty was appointed to succeed Judge Byfield in 1733, and held office until 1747. Judge Auchmuty was an eminent barrister, and from time to time had filled occasional vacancies in the office of Attorney General. He was born in Scotland and educated in Dublin, and studied law in the Temple. He was admitted to practice in Boston in 1720. In 1741 he was sent to England to settle, if possible, the dispute between Rhode Island and Massachusetts, concerning the boundary line between Rhode Island and the territory of the colony of New Plymouth. He died in April, 1750. Chambers Russell succeeded Judge Auchmuty in 1747, and held office until 1767. Judge Russell was the son of Daniel Russell and was born in Charlestown in 1713. He graduated at Harvard in 1731, and from 1747 to 1752 was Judge of the Court of Common Pleas for Middlesex County, and a member of the Council in 1759 and 1760. He settled in Concord and was a Representative from that town. In 1752 he was appointed Judge of the Superior Court, and remained on the bench until his

death, which occurred in Guilford, England, November 24, 1766. George Cradock was Deputy Judge under Russell until 1766, when he was succeeded by William Reed. Judge Russell was succeeded by Robert Auchmuty, Jr., and in the year of his appointment, July 6, 1767, his jurisdiction was made to cover all New England. He continued in office until the Revolution. Judge Auchmuty, son of Robert above mentioned, was born in Boston, and with Adams and Quincy, defended Captain Preston and others connected with the so called Boston massacre. Being a loyalist, he went to England, and there died in December, 1788.

The Advocates General of the Admiralty Court at various times were as follows: Benjamin Lynde was appointed in 1697. He was born in Salem September 22, 1666, and graduated at Harvard in 1686. He studied law in the Middle Temple, London, and in 1697 returned to Massachusetts with his commission as Advocate General. He was Judge of the Superior Court from 1712 to 1729, when he was made Chief Justice. He died in Salem, January 28, 1749. John Valentine succeeded Mr. Lynde, a distinguished lawyer, who died in 1724. William Shirley appointed in 1733, was born in Preston, England, in 1693, and was educated in the law. He came to Boston in 1724, and practised in his profession until 1744, when he was appointed Governor of the province. William Bollan succeeded Mr. Shirley and was born in England. He studied law with Robert Auchmuty, and died in England in 1776. James Otis, Jr., followed, who resigned in 1761. Mr. Otis was son of Colonel James and Mary Allyne Otis, and was born in Barnstable, Mass, February 5, 1725. He graduated at Harvard in 1743 and studied law in Boston with Jeremiah Gridley and finished his studies in Plymouth, where he was admitted

to the bar and practiced several years. The house in which he had his law office in Plymouth is still standing. In 1750 he removed to Boston, and made his memorable speech against writs of assistance in 1761. In 1766 he was speaker of the House of Representatives, and in 1769 was assaulted by John Robinson, one of the commissioners of customs whom he had denounced in an article in the Gazette, and so seriously injured that not long after his mind became deranged. He retired from public life to Andover, where he was killed by lightning May 29, 1783. Robert Auchmuty, who has already been noticed succeeded Mr. Otis followed by Jonathan Sewall. Mr. Sewall, son of Jonathan, was born in Boston, August 24, 1728, and graduated at Harvard in 1748. He was appointed Attorney General of Massachusetts in 1767, and Solicitor General the same year he was made Advocate General, and in 1768 was made Judge of the Nova Scotia Admiralty Court. In 1775 as a loyalist he went to England, and in 1788 settled in St. John, New Brunswick, where he held the position of Admiralty Judge until his death in that place September 26, 1796. Samuel Fitch followed Mr. Sewall in 1770, and continued in office until the Revolution. Mr. Fitch graduated at Yale in 1742, was a barrister in Boston and an addresser of Hutchinson in 1774. He was solicitor of the Board of Customs as well as Advocate General, and in 1776 went to Halifax on the evacuation of Boston, and in 1778 was proscribed and banished. He afterwards went to England where he died in 1784.

The office of Attorney General was established by President Dudley in 1686, who appointed Benjamin Bullivant to that office who was reappointed by Andros. George Farwell succeeded Mr. Bullivant and held office until June 20, 1688. Mr. Farwell came to Massachu-

setts from New York and was sent to England with Andros in 1689. James Graham followed and held office until news of the accession of William and Mary reached Boston, when he was sent to England with Andros and Farwell. Anthony Checkley, born in 1636, was a merchant who had served as an Attorney in the Colonial Courts and as temporary Attorney General of the Court of Oyer and Terminer for the witchcraft trials. He was the first Attorney General under the charter, receiving his appointment from the Governor and Council, October 28, 1692. He had however served in the same office after the deposition of Andros under an appointment made June 14, 1689. In July, 1686, while still pursuing his business career he was admitted to practice and took the oath as Attorney. Paul Dudley was appointed Attorney General July 4, 1702. The son of Joseph Dudley he was born September 3, 1675, and graduated at Harvard in 1690. He studied law in the Temple in London. In 1718 he was appointed an Associate Justice of the Superior Court of Judicature, and in 1745 Chief Justice. He was the founder of the Dudleian lectures at Harvard for which he made a bequest. During the incumbency of Dudley a dispute arose between the Governor and Council and the House of Representatives as to which body should choose the Attorney General, which was finally settled in 1715 by an agreement that he should be chosen by the concurrent vote of both branches of the General Court. Mr. Dudley died January 25, 1752. John Valentine already noticed as Advocate General was Attorney General in 1718 and 1719. Thomas Newton succeeded Valentine and held office until his death May 28, 1721. Mr. Newton was born in England June 10, 1660, and coming to Massachusetts took the oath as Attorney June 8, 1688. He was a Deputy Judge of the Court of Admiralty and

Comptroller of the Customs for the port of Boston where he died May 28, 1721. The next Attorney General was John Overing, chosen by the House of Representatives in 1722. Mr. Overing was a successful Boston Attorney. He was again chosen in 1729 and in 1739, 40, 41, 43 and annually afterwards until his death November 24, 1748. In 1723 John Read was chosen and held office until 1728. Mr. Read was born about 1677 and graduated at Harvard in 1697. He studied divinity, and after preaching for a time studied law and was admitted to the bar about 1720. He was again chosen Attorney General in 1733, 34, 35 and in 1738 was chosen to the General Court, the first lawyer chosen to that body. He was a member of the Council and one of the Attorneys of Massachusetts in the memorable contest with Rhode Island concerning the boundary line, and probably the ablest lawyer in Massachusetts before the Revolution. He died February 7, 1749. Joseph Hiller was chosen June 19, 1728. In 1736 and 1737 William Brattle was chosen. Mr. Brattle, son of Rev. William, was born in Cambridge, Mass., in 1702, and graduated at Harvard in 1722. After studying theology and preaching for a time, he practiced medicine and finally became a lawyer. He was a Representative and a Member of the Council from 1755 to 1768. He was a Loyalist, and retiring to Halifax, died there in October, 1776.

Jeremiah Gridley was chosen Attorney General in 1742 and held the office one year. He was born about 1705 and graduated at Harvard in 1725, and in 1767 was appointed to the office of Attorney General for the second time by the Governor and Council. Before entering the profession he studied divinity and taught school. In 1761, acting under a temporary appointment as Attorney General, he defended the writs of assistance. James Otis, who has been already noticed, was appointed

in 1748 and held the office one year. After that time the Governor and Council assumed the right to appoint the Attorney General, and Edmund Trowbridge was appointed June 29, 1749, and held office until he was appointed Judge of the Superior Court in 1767, when Mr. Gridley was again appointed. Before the end of the year Jonathan Sewall was appointed, November 18, 1767, and was the last Attorney General before the Revolution. Mr. Sewall has already been noticed as one of the Judges of the Admiralty Court.

In the early part of 1767 the office of Solicitor General was established, and on the 24th of June in that year Jonathan Sewall was appointed five months before he was appointed Attorney General. Samuel Quincy, the last Solicitor General before the Revolution was appointed March 21, 1771.

Mr. Quincy, son of Josiah, was born in Braintree, Mass., in 1735 and graduated at Harvard in 1754. He was bred as a lawyer, and as far as the writer knows, the office of Solicitor General was the only one held by him. At the Revolution he adhered to the Crown, and on the 25th of May, 1775, sailed for England, and in 1776 was a member of the Loyalist Association in London. He was proscribed and banished by the act of 1778, and in 1779 was appointed Comptroller of the Customs at the Port of Parham in Antigua. In 1789, on his passage from Antigua to London, he died at sea.

As the Governors of the province were more or less associated with the Judiciary, it will be proper to include a list of them in this narration with a short notice of each. The first Governor under the charter was Sir William Phipps, who was appointed in 1692. He was born in Pemmaquid, now Bristol, Maine, February 2, 1651, and died in London, February 18, 1695. He was the son of a gunsmith and one of twenty-six children,

twenty-one of whom were boys. After learning the trade of ship carpenter he went to Boston and learned to read and write. He then built a vessel and engaged in commerce. In 1684 he went to England to procure means to recover property from a Spanish ship wrecked near the Bahamas. A first expedition for that purpose having failed he undertook a second and recovered in bullion, coin and plate, £300,000, after which he was knighted by James the Second. In 1690 he captured Port Royal, and later commanded an expedition against Canada, composed of thirty-four vessels, with fifteen hundred sailors and thirteen hundred soldiers. The enterprise was abandoned, with the loss of nine vessels wrecked. In 1692 he was appointed Captain General and Governor of Massachusetts, and in August of that year embarked with four hundred and fifty men and built a fort at Pemmaquid. In 1694 he was summoned to England to answer complaints of his administration, and shortly after died at the date above mentioned.

After the departure of Governor Phipps, Lieutenant Governor William Stoughton became Acting Governor until May 26, 1699, when Richard Coote, Earl of Bellomont, arrived at Boston from England by the way of New York as the successor of Governor Phipps. Richard Coote was born in England in 1636 and died in New York March 5, 1701. He was raised to the peerage for services at the restoration of Charles the Second. He was a member of Parliament in 1688 and one of the first to declare his adherence to William of Orange. He was attainted by the Parliament held by James the Second in Dublin, in 1689 and in the same year made Earl of Bellomont and appointed Treasurer and Receiver General of Queen Mary. In 1695 he was made Governor of New York. After a year's stay in Boston he returned to New York where he died in 1701 and was buried in

St. Paul's churchyard. After the retirement of Bello-mont to New York, Lieutenant Governor William Stoughton acted as Governor until his death in 1701, when the Council became the governing power, until June 11, 1702, when Joseph Dudley became Governor, of whom a notice has been already given. After the retirement of Dudley in 1715 Lieutenant William Taylor acted as Governor one year and also acted as Governor after the retirement of Lieutenant Governor Dunmer. He was born in 1676, was commander of the Ancient and Honorable Artillery Company in 1712 and was in England in 1721. He commanded a regiment at Port Royal, and died on his estate in Dorchester, Mass., March 8, 1732. Samuel Shute was appointed Governor October 4, 1716. He was born in London in 1653 and died in England April 15, 1742. He was brought up a dissenter and educated at the University of Leyden in Holland, but later became connected with the established church. He was in the army under William of Orange and Marlborough in the Netherlands as lieutenant colonel.

From December 27, 1722, to July 13, 1728, Lieutenant Governor William Dunmer acted as Governor. Mr. Dunmer was born in Boston in 1677. He was appointed Lieutenant Governor in 1716, and continued in office until 1730. After the death of Governor Burnet in 1728, he again acted as Governor during the remainder of his official term. He died in Boston, October 10, 1761. William Burnet succeeded, July 13, 1728. He was born at the Hague in March, 1688, the son of Bishop Burnet, and William of Orange was his godfather. He arrived in America as Governor of New York and New Jersey, September 17, 1720. In 1722 he established a trading fort at Oswego, and in 1727 built at that place the first fort on the border. He was removed April 15, 1728, and transferred to Massachusetts at the date above mentioned.

Jonathan Belcher became Governor August 8, 1730, and held office until 1741. He was son of Andrew and born January 8, 1681. He graduated at Harvard in 1699 and afterwards spent six years in Europe. He engaged in business in Boston and in 1729 was Colonial Agent in England. After his retirement from office in Massachusetts he was appointed Governor of New Jersey and died at Elizabethtown in that State August 31, 1757. William Shirley who has been noticed as one of the Advocates General of the Admiralty Court was appointed Governor August 17, 1741, and held office until September 25, 1756. In 1749 and again in 1756 Lieutenant Governor Spencer Phipps acted as Governor. He was born in Rowley, Mass., June 6, 1685, and was son of Dr. David Bennet of Rowley and nephew of Sir William Phipps by whom he was adopted and whose name he was authorized to take. He graduated at Harvard in 1703, and died in Boston, April 4, 1757. After the death of Lieutenant Governor Phipps the Council was the governing power until August 3, 1757, when Thomas Pownall became Governor. Governor Pownall was born in Lincoln, England in 1720, and his father was in the English civil service in India. He came to America in October, 1753, as the Secretary of Sir Danvers Osborne, Royal Governor of New York. In 1755, he was appointed Commissioner for Massachusetts to negotiate with New York authorities concerning operations against the French. In the same year he was appointed Lieutenant Governor of New Jersey and in 1760 after his retirement from Massachusetts he was made Governor of South Carolina. In 1767 he was a member of Parliament and opposed taxation of the colonies. He died in Bath, England, February 25, 1805. In 1760, Lieutenant Governor Thomas Hutchinson acted as Governor from June 3d to August 1st, and was appointed Gov-

ernor in March, 1771, serving until 1774. He was son of Thomas and was born in Boston, September 9, 1711, and graduated at Harvard in 1727. He was a Selectman and Representative and from 1761 to 1769 Chief Justice of the Superior Court of Judicature. He published a history of Massachusetts down to 1750, and in 1774 went to England where he died in the town of Brompton, June 3, 1780. Sir Francis Bernard Bart succeeded as Governor August 1, 1760. He was born in Nettleham, Lincolnshire, in 1714 and graduated at Oxford in 1736. He studied law in the Middle Temple and became Steward of Lincoln and Recorder of Barton, England. In 1768 he was appointed Governor of New Jersey. In 1769 he was recalled and died in Aylesbury, England, June 16, 1779. Thomas Gage succeeded Governor Hutchinson, May 13, 1774. He was the son of Thomas Gage, Viscount Gage of Castle Island and Baron Gage, and was born in Firle Sussex in 1721. In 1747 he was a major in the army and at Braddock's defeat as lieutenant colonel distinguished himself. In 1758 he was at Ticonderoga as Colonel and was made Military Governor of Montreal in 1760. In 1763 he was made Commander in Chief of America, and in 1773 returned to England. On the 13th of May, 1774, he arrived in Boston with the commission of Governor, and put into effect the port bill and the regulation act. He was recalled and sailed for England, October 10, 1775.

The Judges of the Superior Court of Judicature which continued during the whole of the provincial period and until February 20, 1781, were as follows:

CHIEF JUSTICES.

William Stoughton appointed 1692; Wait Winthrop appointed 1701; Isaac Addington appointed 1702; Wait Winthrop appointed 1708; Samuel Sewall appointed

1718; Benjamin Lynde appointed 1729; Paul Dudley appointed 1745; Stephen Sewall appointed 1752; Thomas Hutchinson appointed 1761; Benjamin Lynde, Jr., appointed 1769; Peter Oliver appointed 1772; John Adams appointed 1775; William Cushing 1777.

ASSOCIATE JUSTICES.

Thomas Danforth appointed 1692; Wait Winthrop appointed 1692; John Richards appointed 1692; Samuel Sewall appointed 1692; Elisha Cooke appointed 1695; John Walley appointed 1700; John Saffin appointed 1701; John Hathorne appointed 1702; John Leverett appointed 1702; Jonathan Curwin appointed 1708; Benjamin Lynde appointed 1712; Nathaniel Thomas appointed 1712; Addington Davenport appointed 1715; Edmund Quincy appointed 1718; Paul Dudley appointed 1718; John Cushing appointed 1728; Jonathan Remington appointed 1733; Richard Saltonstall appointed 1736; Thomas Graves appointed 1737; Stephen Sewall appointed 1739; Nathaniel Hubbard appointed 1745; Benjamin Lynde, Jr., appointed 1745; John Cushing appointed 1747; Chambers Russell appointed 1752; Peter Oliver appointed 1756; Edmund Trowbridge appointed 1767; Foster Hutchinson appointed 1771; Nathaniel Ropes appointed 1772; William Cushing appointed 1772; William Brown appointed 1774; Nathaniel P. Sargeant appointed 1775; William Reed appointed 1775; Robert Treat Paine appointed 1775; James Warren appointed 1776; Jedediah Foster appointed 1776; James Sullivan appointed 1776; David Sewall appointed 1777.

Of the above lists John Adams and James Warren never took their seats. Besides the standing Justices of the Superior Court of Judicature special Justices were appointed to act when the standing Justices were

parties in interest. An examination of the records by the writer has disclosed the following special appointments :

✓ Penn Townsend, October 24, 1712; Nathaniel Norden, October 24, 1712; John Burrill, October 24, 1712; Addington Davenport, September 16, 1715; John Clark, January 7, 1718; Thomas Fitch, January 7, 1718; John Clark, June 27, 1719; Thomas Fitch, June 7, 1719; Josiah Wolcott, December 15, 1720; John Cushing, September 6, 1723; John Clark, September 6, 1723; Jonathan Remington, September 6, 1723; Thomas Fitch, December 10, 1725; Job Almy, September 1, 1726; Elisha Cooke, February 23, 1726-7; Jonathan Remington, February 23, 1726-7; Isaac Winslow, June 19, 1727; John Cushing, June 19, 1727; Nathaniel Byfield, June 27, 1727; Thomas Fitch, June 27, 1727; Jonathan Remington, June 27, 1727; Nathaniel Byfield, December 12, 1728; Thomas Fitch, December 12, 1728; Theophilus Burrill, December 12, 1728; Jonathan Remington, December 12, 1728; Nathaniel Byfield, December 19, 1728; Adam Winthrop, December 19, 1728; Nathaniel Byfield, January 11, 1732-3; Adam Winthrop, June 22, 1733; Thomas Cushing, June 22, 1733; Ezekiel Lewis, June 22, 1733; Theophilus Burrill, April 19, 1735; Joseph Wilder, April 19, 1735; Samuel Thaxter, June 27, 1735; Thomas Berry, June 27, 1735; Benjamin Prescott, June 27, 1735; Thomas Greaves, February 10, 1736-7; Job Almy, October 25, 1737; Thomas Greaves, November 10, 1737; Benjamin Prescott, November 10, 1737; Seth Williams, August 12, 1738; Benjamin Marston, August 12, 1738; William Ward, August 19, 1738; Seth Williams, March 2, 1738-9; William Ward, March 2, 1738-9; Edward Hutchinson, May 2, 1739; Joseph Wilder, May 2, 1739; Stephen Sewall, May 2, 1739; Ebenezer Burrill, June 15,

1739; Thomas Berry, January 24, 1739-40; Benjamin Marston, January 24, 1739-40; Edward Hutchinson, April 18, 1743; Nathaniel Hubbard, April 18, 1743; Edward Hutchinson, November 3, 1743; Nathaniel Hubbard, November 3, 1743; John Cushing, October, 23, 1744; Sylvanus Bourne, October 23, 1744; John Cushing, August 19, 1747; Sylvanus Bourne, August 19, 1747; Joseph Pynchon, August 19, 1747; John Greenleaf, April 6, 1748; Ezekiel Cheever, January 11, 1748-9; Charles Russell, January 11, 1748-9; John Jeffries, March 2, 1748-9; William Brattle, March 2, 1748-9; Thomas Hubbard, March 2, 1748-9; Joseph Sawyer, June 19, 1749; Nathaniel Sparhawk, June 19, 1749; Ezekiel Cheever, August 12, 1749; Joseph Richards, August 12, 1749; Charles Russell, February 23, 1749-50; Simon Frost, February 23, 1749-50; Samuel Danforth, August 24, 1753; Ezekiel Cheever, August 24, 1753; Thomas Hutchinson, September 20, 1754; Thomas Hutchinson, February 21, 1755; William Brattle, June 26, 1755; Andrew Oliver, February 13, 1756; William Brattle, February 13, 1756; John Chandler, February 20, 1756; Andrew Oliver, February 20, 1756; Benjamin Lincoln, August 1, 1758; Samuel White, August 1, 1758; Timothy Ruggles, February 23, 1762; Samuel Danforth, August 10, 1762; Nathaniel Ropes, September 7, 1762; Nathaniel Ropes, August 30, 1770; Jedediah Foster, September 17, 1770; Timothy Paine, February 14, 1771; Joseph Lee, February 17, 1773; William Browne, February 17, 1773; Joseph Lee, March 4, 1773; William Browne, March 4, 1773.

There were also Commissioners of Oyer and Terminer appointed by the Governor and Council to try special cases in accordance with authority given in the charter as follows:

“And we do further grant and ordain that it shall and may be lawful for the said Governor with the advice and consent of the Council or Assistants from time to time to nominate and appoint judges, commissioners of Oyer and Terminer, sheriffs, provosts, marshals, Justices of the Peace and other officers to our council and courts of justice belonging.”

It is probable that Governor Phipps assumed the right under this clause, to organize in 1692 the Court of Oyer and Terminer for the witchcraft trials. The following is a list of Commissioners appointed at various times including the witchcraft Judges :

William Stoughton, John Richards, Wait Winthrop, Bartholomew Gedney, Samuel Sewall, Jonathan Curwin, Peter Sergeant, appointed June 2, 1692, to take cognizance of all crimes in Suffolk, Essex and Middlesex (witchcraft).

Francis Hooke, Charles Frost, Samuel Wheelwright, Thomas Newton, appointed October, 22, 1692, to try murderers in the County of York.

Thomas Danforth, Wait Winthrop, Elisha Cooke, Samuel Sewall, appointed December 22, 1698, to try Jacob Smith.

John Hathorne, William Browne, Jonathan Curwin, Benjamin Brown, John Higginson, appointed November 23, 1703, to try an Indian in Salem.

John Gardner, James Coffin, Thomas Mayhew, Benjamin Skiffe, William Gayer, appointed June 15, 1704, to try an Indian in Nantucket.

Joseph Hammond, Ichabod Plaisted, John Plaisted, William Pepperell, John Wheelwright, John Hill, Lewis Bane or any four of them appointed November 8, 1707, to try Joseph Gunnison for murder.

Wait Winthrop, Samuel Sewall, John Hathorne, Jonathan Curwin, Elisha Hutchinson, appointed March 7, 1711.

Nathaniel Thomas, John Otis, James Warren, John Gorham, appointed June 5, 1713, to try two Indians for capital crimes.

Samuel Partridge, John Pynchon, John Parsons, John Stoddard, appointed December 3, 1718, to try at Northampton, Ovid Ruchbrock for counterfeiting bills of credit of the Province.

John Cushing, Sylvanus Bourne, Zacheus Mayhew, Enoch Coffin, John Otis, appointed June 23, 1743, to try an Indian at Nantucket.

John Cushing, Sylvanus Bourne, Zacheus Mayhew, Enoch Coffin, John Otis, appointed August 9, 1746, for a trial at Nantucket.

Short notices have already been given of the following members of the Superior Court of Judicature in connection with other official positions held by them: William Stoughton, Wait Winthrop, Samuel Sewall, Benjamin Lynde, Thomas Hutchinson and Paul Dudley. It will be proper to include in this narrative short sketches of the other members of the Court.

Isaac Addington, appointed Associate Justice in 1702 and Chief Justice in 1703, was son of Isaac and born in Boston, January 22, 1645. He was educated as a surgeon but engaging in public affairs became a member of the House of Representatives and Speaker in 1685. In 1686 he was an Assistant, and after the deposition of Andros was made Secretary of the Colony, an office which he continued to hold under the charter until his death. He was Judge of the Inferior Court of Common Pleas for Suffolk County, from March 3, 1693 to 1702, when he was appointed to the Superior Bench. He died March 19, 1715.

Benjamin Lynde, Jr., appointed Associate Justice of the Superior Court in 1745, and Chief Justice in 1769, was son of Chief Justice Benjamin Lynde and born in

Salem, October 5, 1700. He graduated at Harvard in 1718 and in 1739 was appointed Judge of the Inferior Court of Common Pleas for Essex County. He resigned his seat as Chief Justice in 1771 and was appointed Judge of Probate for Essex County, holding that position until his death, October 9, 1781.

Peter Oliver was son of Daniel and born in Boston, March 26, 1713. He graduated at Harvard in 1730, and after establishing himself in Middleboro, Mass., was appointed in 1747, Judge of the Inferior Court of Common Pleas for Plymouth County, and held that position until 1756, when he was appointed Associate Justice of the Superior Court of Judicature. In 1772 he was made Chief Justice to succeed Benjamin Lynde, Jr., who had resigned. In 1774 by a modification of the charter the salaries of the Judges were made payable by the Crown, and the salary of the Chief Justice was increased to £400. All the Judges except Oliver refused to receive their salaries from the Crown. In 1775 he left the bench and, loyal to the King, went to England in 1776 and died in Birmingham, England, October 13, 1791. During his residence in England he received the degree of LL. D. from the University of Oxford.

Thomas Danforth, son of Nicholas, was born in England in 1622. He was an Assistant from 1659 to 1678, and Deputy Governor from 1679 to 1686. In 1692 he was appointed Associate Justice of the Superior Court and remained on the bench until his death, November 5, 1699.

John Richards, son of Thomas, was born in England and came to Massachusetts with his father in 1730. He was treasurer of Harvard College from 1669 to 1682, and from 1686 to 1693. He was a Deputy from Newbury from 1671 to 1673, from Hadley in 1675, and from Boston in 1679-80, serving during the last two

years as Speaker of the House. He was an Assistant from 1680 to 1686, and sat as Associate Justice on the bench of the Superior Court from 1692 to 1694. He died April 2, 1694.

Elisha Cooke, appointed Associate Justice in 1695, was son of Richard, and born in Boston, September 16, 1637. He graduated at Harvard in 1657, and was educated as a physician. He was a member of the House of Representatives from 1681 to 1683, Speaker of the House in 1683, and Assistant from 1684 to 1686. He died October 31, 1715.

John Walley, appointed in 1700 Associate Justice, was son of Rev. Thomas Walley, and born in Barnstable, and was an Assistant in the Plymouth Colony from 1684 to 1686. In 1679 he was commander of the Ancient and Honorable Artillery Company and served in 1690 in the expedition against Quebec as commander of the land forces. He was one of the founders of the town of Bristol, and died in Boston, January 11, 1712.

John Saffin, appointed Associate Justice of the Superior Court in 1701, was born in England, and coming to Massachusetts in 1650 settled in Scituate. He afterwards removed to Boston and was Speaker of the House of Representatives in 1686. In 1688 he removed to Bristol and was appointed Judge of Probate for Bristol County which then included the town of Bristol, and held that office until his appointment to the Superior Court. He died at Bristol July 29, 1710.

John Hawthorne, appointed Associate Justice in 1702 was son of William and born in Salem about 1641. He was an Assistant from 1684 to 1686 and continued on the bench until June, 1712. He died in Boston May 10, 1717.

John Leverett, appointed Associate Justice in 1702 was the grandson of Governor John Leverett and born

in Boston August 25, 1662. He graduated at Harvard in 1680, and after studying divinity, was educated as a lawyer. He was speaker of the House of Representatives in 1700 and Judge of Probate, and the successor of Samuel Willard as President of Harvard College in 1707. He remained on the bench until 1707, and died May 3, 1724.

Jonathan Curwin, appointed Associate Justice in 1708, was born in Salem in November, 1640. In 1692 he was appointed by Governor Phipps one of the Judges to try the alleged witches in the place of Nathaniel Saltonstall, who had declined. In the same year he was appointed Judge of the Inferior Court of Common Pleas for Essex County, and held that office until his appointment to the Superior Court. He resigned in 1715 and died in June, 1718.

Nathaniel Thomas, appointed Associate Justice in 1712, was the son of Nathaniel and Deborah (Jacobs) Thomas, and was born in Marshfield about 1665. He was a great grandson of William Thomas, one of the merchants of London, who assisted the Pilgrims in their enterprise, and came to Massachusetts in 1630, and settled in Marshfield. He was bred as a lawyer and took the oath as an Attorney of the Superior Court in 1686. He was a Judge of the Inferior Court of Common Pleas for Plymouth County from 1702 to 1712. Judge Washburn, in his Judicial History, errs in stating that General John Thomas of the Revolution was a descendant of Nathaniel. The General belonged to an entirely distinct family, and was descended from John Thomas, who came an orphan from London in 1635, in the ship Hopewell. General Thomas married Hannah Thomas, a granddaughter of Judge Nathaniel, and thus the descendants of the General can claim both William of 1630 and John of 1635 as their ancestors.

Judge Thomas left the Superior bench in 1718, and died in the same year.

Addington Davenport, appointed Associate Justice in 1715, was the son of Eleazer and Rebecca (Addington) Davenport, and was born August 3, 1670. He graduated at Harvard in 1689, and was Clerk of the first House of Representatives, under the charter in 1692, and in 1695 was appointed Clerk of the Superior Court of Judicature. He was later appointed Clerk of the Inferior Court of Common Pleas for Suffolk County and Register of Deeds. In 1714 he was chosen member of the Council, and was a representative in 1711-12, 13. He remained on the bench until his death in 1736.

Edmund Quincy, appointed Associate Justice in 1718, was the son of Edmund Quincy, and was born in Braintree, Mass., October 24, 1681. He graduated at Harvard in 1699, and in 1713 was commissioned Colonel of the Suffolk regiment. He was Representative many years, and in 1715 was chosen member of the Council. In 1737 he was appointed agent of Massachusetts and went to England in the performance of his duties touching the boundary line between Massachusetts and New Hampshire, while still holding his seat on the bench. He was inoculated for the small pox in London, and died of the disease February 23, 1737.

John Cushing, appointed Associate Justice in 1728, was born in Scituate, Mass., in 1662. He was appointed Chief Justice of the Inferior Court of Common Pleas for Plymouth County in 1702, and held his seat until appointed to the Superior Court. He remained on the bench until his death in Scituate in 1737.

Jonathan Remington, appointed Associate Justice in 1733, was born in Cambridge about 1677, and graduated at Harvard in 1696. He was appointed Chief Justice of the Inferior Court of Common Pleas for

Middlesex County in 1715, to succeed John Phillips, and in 1731 was made Judge of Probate of that County. He remained on the bench until his death, September 20, 1745.

Richard Saltonstall, appointed Associate Justice in 1736, was the son of Richard and Mehitable (Wainwright) Saltonstall, was born in Haverhill, Mass., June 24, 1703, and graduated at Harvard in 1722. He was a member of the Council from 1743 to 1745, and remained on the bench until his death, October 20, 1756.

Thomas Greaves or Graves, appointed Chief Justice in 1738, to supply the place of Edmund Quincy during his absence in England as agent of the province, was born in Charlestown in 1684, and graduated at Harvard in 1703. He was educated as a physician. In 1731 he was appointed Special Judge of the Inferior Court of Common Pleas for Middlesex County, and in 1735 Special Judge of the same Court for Suffolk County, and in 1737 Special Judge of the Superior Court. In 1733 he was appointed Judge of the Inferior Court for Middlesex County, and while acting as Judge of the Superior Court in the place of Mr. Quincy, Francis Foxcroft acted as his substitute. On the death of Mr. Quincy, Stephen Sewall was appointed Judge of the Superior Court and Judge Greaves returned to his place on the Inferior Court bench, where he remained until his death, June 19, 1747.

Nathaniel Hubbard, appointed Associate Justice in 1745, probably grandson of Rev. William Hubbard, was born about 1679. In 1729 he was appointed Deputy Judge of Admiralty for Bristol County and Rhode Island, and the Narraganset Country, and from 1728 to 1745 was Judge of the Inferior Court for Bristol County. He resided many years in the town of Bristol, but the writer has been unable to learn where he lived after

Bristol was set off to Rhode Island. He remained on the bench until his death in 1747.

John Cushing, appointed Associate Justice in 1747, was son of Judge John Cushing above mentioned and was born in Scituate, Mass., in 1695. From 1746 to 1763, he was a member of the Council, and from 1738 to 1746, Judge of Probate for Plymouth County. From 1738 to 1747, he was Judge of the Inferior Court of Common Pleas for Plymouth County. He resigned his seat on the Superior bench in 1771 and died in 1778.

Chambers Russell, appointed Associate Justice in 1752, was son of Daniel Russell and born in Charlestown in 1713. He graduated at Harvard in 1731 and established himself in Concord and represented that town in the General Court. From 1747 to 1752, he was Judge of the Inferior Court of Common Pleas for Middlesex County and a member of the Council in 1759 and 1760. In 1747, he was appointed Judge of Vice-Admiralty over New Hampshire, Massachusetts and Rhode Island, and was one of the few Judges of his time educated to the law. He remained on the Superior bench until his death which occurred in Guilford, England, November 24, 1766.

Edmund Trowbridge, appointed Associate Justice in 1767, was born in Newton in 1709 and graduated at Harvard in 1727. He was educated to the law, and in 1749 was appointed Attorney General of the Province. In 1764 and 1765 he was a member of the Council. He resigned his seat in the Superior Court in 1775 and died in Cambridge, April 2, 1793.

Foster Hutchinson, appointed Associate Justice in 1771, was a brother of Governor Thomas Hutchinson and son of Thomas, a Boston merchant. He was born in Boston about 1702 and graduated at Harvard in 1721. He was appointed Judge of the Inferior Court

of Common Pleas for Suffolk County in 1758 and remained on the bench until he was promoted to the Superior Court. In 1769 he was appointed Judge of Probate for Suffolk County and retained that office together with his seat on the Superior bench until the Revolution, when, being a Loyalist, he went to England and there died.

Nathaniel Ropes, appointed Associate Justice in 1772, was born in Salem, May 20, 1726, and graduated at Harvard in 1745. He was a member of the Council from 1762 to 1769, and in 1761 was appointed Judge of Probate for Essex County and Chief Justice of the Inferior Court of Common Pleas for that County. He remained on the Superior bench until his death March 18, 1774.

William Browne, appointed Associate Justice in 1774, was born in Salem, February 27, 1737, and graduated at Harvard in 1755. He was many years a Representative from Salem, and Judge of the Inferior Court of Common Pleas for Essex County from 1770 to 1774. He remained on the Superior bench until the Revolution when he left the country and was made Governor of Bermuda. He died in England, February 13, 1802.

William Cushing, appointed Associate Justice in 1772, was the son of Judge John Cushing, and born in Scituate March 1, 1732. He graduated at Harvard in 1751, and studied law with Jeremiah Gridley in Boston and established himself in Pownalboro, Maine. In 1760 he was appointed Judge of Probate of Lincoln County. In 1777 he was appointed Chief Justice of the Superior Court, and after the reorganization of the court in November, 1775, he was retained on the bench as Associate Justice, and John Adams was appointed Chief Justice. Mr. Adams never took his seat, and on his resignation, Judge Cushing was, in 1777, made

Chief Justice. In 1789 he was appointed Associate Justice of the United States Supreme Court. In 1787 he was President of the Massachusetts Convention to act on the adoption of the Constitution of the United States. He acted as Presiding Judge of the United States Supreme Court, during the absence, in Europe, of Chief Justice Jay, and on the resignation of Judge Jay, in 1796, he was appointed Chief Justice. This appointment he declined, remaining, however, on the bench as Associate Justice until his death, September 13, 1810. His body lies in a modest burial ground, near the railroad, in the town of Norwell, which was formerly a part of Scituate.

Nathaniel Peaslee Sargeant, appointed Associate Justice on the reorganization of the court in 1775, was the son of Rev. Christopher Sargeant, and born in Methuen, Mass., November 2, 1731. He graduated at Harvard in 1750, and established himself in the practice of law in Haverhill. He was a delegate to the Provincial Congress, and in 1790, when Chief Justice William Cushing left the Superior Court to take his seat in the United States Supreme Court, Judge Sargeant succeeded him as Chief Justice. He remained on the bench until his death, which occurred at Haverhill in October, 1791.

William Reed, appointed Associate Justice on the reorganization of the court in 1775, was of Boston. In 1776 he was Deputy Judge of the Admiralty Court, and in 1768 was a Barrister. In 1770 he was appointed Judge of the Inferior Court of Common Pleas for Suffolk County, and held that office until the Revolution. In the next year, after his appointment to the Superior Court, he was superseded, and died in 1780.

James Warren, appointed Associate Justice in 1776, never took his seat. He was the son of James and

Penelope (Winslow) Warren of Plymouth, and a descendant from Richard Warren of the Mayflower. He was born in Plymouth, September 28, 1726, and in 1757 was appointed High Sheriff for Plymouth County, and held that position until the Revolution. In 1773 he proposed the establishment of Committees of Correspondence and Safety, and after the death of Dr. Joseph Warren at Bunker Hill, succeeded him as President of Provincial Congress. In 1775, while the army was in Cambridge, he was made Paymaster General, and afterwards Major General of the Militia. After the adoption of the Constitution, he was for two years Speaker of the House of Representatives, and was offered the position of Secretary of the Navy, which he declined. The Sloop of War "Warren," lost on the coast of Maine, was named in his honor. He married Mercy Otis, sister of the Patriot James Otis, and died in Plymouth, November 27, 1808.

Robert Treat Paine was appointed Associate Justice in 1776, but declined. He was son of Thomas and Eunice (Treat) Paine, and was born in Boston, March 11, 1731. He graduated at Harvard in 1749, and received a degree of LL. D. in 1805. After leaving college he taught school, and afterwards made three voyages to North Carolina as master, and one to Greenland for whales. Later he studied for the ministry, and served for a time as chaplain in the French War. He afterwards studied law with Judge Willard in Lancaster, and with Benjamin Pratt in Boston, and was admitted to the Suffolk Bar in 1759. He first established himself in practice at Boston, and afterwards in Taunton, which town he represented in the General Court in 1769. In 1770, in the absence of the Attorney General, he conducted the prosecution of Capt. Preston, the officer in command at the Boston massacre, and in

1774-5 was a delegate to the Provincial Congress. He was a member of the Continental Congress, and in 1777 Speaker of the House of Representatives. During the Revolution he was appointed, in 1780, Attorney General to succeed Jonathan Sewall, and held office until the appointment of James Sullivan, February 12, 1790. In 1779 he was a member of the State Constitutional Convention, and in 1780 removed to Boston, where he occupied the residence of Governor Shirley, on the corner of Milk and Federal Streets. In 1790 he was appointed a Judge of the Supreme Judicial Court, which position he held until his resignation in 1804. As a lawyer, judge and signer of the Declaration of Independence, his name has been made immortal. He died in Boston, May 11, 1814.

Jedediah Foster, appointed Associate Justice in 1776, was born in Andover, Mass., October 10, 1726, and graduated at Harvard in 1744. He settled as a lawyer in Brookfield, Mass., and was a delegate to the Provincial Congress in 1774-5. He remained on the bench until his death, October 17, 1779.

James Sullivan, appointed Associate Justice in 1776, was the son of John and Margery (Brown) Sullivan, and born in Berwick, Maine, April 22, 1744. He was educated chiefly by his father, and studied law with his brother John at Durham, N. H. Before 1782 he was a member of the Suffolk bar, but before that time he practiced ten years in Biddeford, Maine. He was a delegate to the Provincial Congress from Biddeford in 1774-5, and a member of the General Court in 1775-6. He was appointed to the Superior Bench, March 20, 1776, and resigned in 1782. In 1778 he removed from Biddeford to Groton, and in 1779 was a delegate from that town to the Massachusetts Constitutional Convention. In 1782 he was a delegate to the Continental Con-

gress and in 1787 a member of the Executive Council. In 1788 he was appointed Judge of Probate, in 1790 Attorney General, and in 1807 was chosen Governor, dying in office in Boston, December 10, 1808.

David Sewall, appointed Associate Justice in 1777, was the son of Samuel and was born in York, Maine, October 7, 1735. He graduated at Harvard in 1755, and studied law with Judge William Parker of Portsmouth, N. H. He established himself in York, was appointed Register of Probate in 1766 and Judge of the Superior Court in 1777. In 1779 he was appointed Judge of the United States District Court, and remained on the bench until 1818. He died at York, October 12, 1825.

John Adams was, on the reconstruction of the court, appointed Chief Justice in 1775, but never took his seat, and resigned the next year. Of a person so universally known as Mr. Adams it is unnecessary to speak, except for the purpose of making this narrative complete. He was the son of John and Susanna (Boylston) Adams, and was born in Braintree, Mass., October 31, 1735. He graduated at Harvard in 1755, and after studying law in Worcester, he began practice in Boston in 1758, while retaining his residence in Braintree. He moved to Boston in 1768, and was soon after made a Barrister. In 1770 he was one of the counsel defending Captain Preston and others in command of British soldiers at the so-called Boston massacre, and in the same year was chosen Representative. He was a delegate to the Congress of 1774 and 1775, a member of Provincial Congress, and President of the Board of War in 1776-7, and in 1777 was appointed Commissioner to France. He was appointed by Congress Minister to treat with Great Britain for peace in 1779, and in 1780 was sent to Holland to negotiate a loan. With

Franklin and Jay he negotiated a treaty of commerce with Great Britain, and in 1785 was sent Minister to the Court of St. James. In 1788 he was chosen Vice President, and in 1796 President. In 1820 he was a delegate to the Massachusetts State Convention, and died in Quincy, Mass., July 4, 1826.

As has been previously stated, an act passed in 1692 establishing Courts was disallowed by the Privy Council in 1695, and another passed in 1696 was also disallowed in 1698. The Courts named in the above acts went into operation and Judges were appointed for the same at the time of the first enactment, in 1692, under a clause in the charter which provided that all laws should be sent to England, and if not disallowed within three years they should continue in force. The word "continue" implied that they should go into effect on their enactment and that a disallowance should operate only as a repeal. Of course, a repeal of the laws operated as a discontinuance of the Courts established under them and made new commissions for the Judges necessary.

It will be remembered that in May, 1699, three acts were passed as substitutes for the acts which had been disallowed, which received royal approval. These acts established three courts, — a Court of General Sessions of the Peace, an Inferior Court of Common Pleas, and a Superior Court of Judicature. Abstracts of the first and last of these have already been given, and before entering more particularly on the second it will be proper to state its provisions somewhat in detail. It provided as follows: "That there shall be held and kept in each respective county within the province, and at the island of Nantucket within the same, yearly and every year, at the times and places in this act hereafter mentioned and expressed, an Inferior Court of Common

Pleas, by four substantial persons, to be appointed and commissioned as justices of the same court in each county, any three of whom to be a quorum for the holding of the said court, who shall have cognizance of all civil actions arising or happening within such county, triable at the common law of what nature, kind or quality soever, and are hereby empowered to give judgment thereon and award execution thereupon."

It further provided "that all processes and writs for the bringing any cause or suit to trial in any of the said inferior courts shall issue out of the clerk's office of such court in his Majesty's name, under the seal of the said court, to be signed by the clerk and directed to the sheriff or marshal of the county, his under-sheriff or deputy, and if such process or writ be against the sheriff or marshal, to be directed to the coroner of such county, who is hereby empowered to execute the same, and when the sum sued for is under ten pounds, may be also directed to the constables of the town; and writs as well original as judicial, issuing out of the clerk's office of the said court, shall run into any county and place within this province and be there executed by the officer or officers of such county to whom they are directed; and all proper original processes in the said court shall be summons, *capias* or attachment, which shall be served and executed fourteen days before the day of the sitting of the court where such writ or process is returnable. Provided that no action under the value of forty shillings shall be brought into any of the said inferior courts, unless where freehold is concerned or upon appeal from a justice of the peace."

And it further provided that "in convenient time, before the sitting of the said Inferior Court in each respective County, the Clerk of such court shall issue out warrants directed to the constables of the several towns

within the same county, or the most principal of them, requiring them to assemble the freeholders and other inhabitants of their towns qualified as in and by his Majesty's royal charter is directed to elect and choose so many good and lawful men of the said town or districts thereof, alike qualified as aforesaid as the warrant shall direct, to serve as jurors at such court; and the constable shall summon the person so chosen to attend accordingly, at the time and place appointed, and make timely return of his warrant unto the Clerk that granted the same, on pain that every constable failing of his duty therein, shall forfeit and pay into the County Treasury, for the use of the county, a fine not exceeding five pounds, nor less than forty shillings, at the discretion of the Justices of such court; unless such constable so failing of his duty as aforesaid shall seasonably make a reasonable excuse unto the Justices of said court for his default, and the same be allowed by them. And, if by reason of challenge or otherwise, there do not appear a sufficient number of good and lawful men to make up the petty jury or juries to serve at the said court, then and in such case the said jury or juries shall be filled up *de talibus circumstantibus*, to be returned by the Sheriff, and where the Sheriff is concerned or related to either of the parties in any case, to be returned by the Coroner."

During the life of the province, no other laws were passed touching the courts, except one passed in 1701, entitled "An act for regulating of trials in civil causes." That act provided that all writs, indictments, entries, etc., in the several courts should be in the English tongue; that no summons, process, writ, etc., shall be abated for any kind of circumstantial error, where the person and case may be rightly understood and intended by the court, nor through defect or want

of form only ; that the several courts may make rules for practice, and appoint Clerks ; that Town Clerks as well as Court Clerks may grant summons for witnesses ; that witnesses shall receive two shillings per day for travel and expenses ; and that appeals to the Superior Court of Judicature within thirty days may be had from the Inferior Court of Common Pleas.

At the time the Inferior Court of Common Pleas went into operation, in 1692, that part of the province which now constitutes the Commonwealth of Massachusetts included the following Counties : Barnstable, Bristol, Dukes County, Essex, Hampshire, Middlesex, Nantucket, Plymouth and Suffolk. Only two other Counties were incorporated during the life of the province, Berkshire incorporated April 21, 1761, and Worcester April 2, 1731.

It will be well to bear in mind that the Counties of Nantucket and Dukes County though not incorporated until June 22, 1695, were made parts of the Province by its charter and were, therefore, for the purposes of this narrative, practically Counties when the Inferior Court Act was passed in 1692. Beginning with Barnstable County in the description of the Inferior Courts of Common Pleas the town of Barnstable has always been its shire town, and the present courthouse was built to replace an earlier one which was burned in 1827, with the loss of many valuable records. The Judges of the Inferior Court for the County, as nearly as the writer can learn, were as follows : Barnabas Lothrop, appointed December 7, 1692 ; John Freeman appointed December 7, 1692 ; John Thacher appointed December 7, 1692 ; Stephen Skiffe, appointed December 7, 1692 ; Jonathan Sparrow appointed March 6, 1694-5 ; John Otis appointed June 29, 1702 ; William Bassett appointed June 22, 1710 ; John Gorham appointed July 20,

1711; Daniel Parker appointed June 5, 1713; Thomas Paine appointed June 5, 1714; Nathaniel Freeman appointed December 10, 1715; Isaac Lothrop appointed November 15, 1721; Ezra Bourne appointed December 26, 1727; Peter Thacher appointed April 10, 1729; Joseph Lothrop appointed April 10, 1729; Shubael Baxter appointed April 10, 1729; John Otis, Jr., appointed August 10, 1746; David Crocker appointed August, 1747; Thomas Smith appointed August, 1758; John Thacher appointed June 2, 1758; Thomas Winslow, appointed June 2, 1758; Sylvanus Bourne appointed June 2, 1758; James Otis appointed February, 1764; Edward Bacon appointed February, 1764; Daniel Davis appointed October 11, 1775; Nathaniel Freeman appointed October 11, 1775; Richard Baxter appointed October 11, 1775.

The special Justices were as follows: Nathaniel Thomas appointed November 9, 1705; John Cushing appointed November 9, 1705; Samuel Sturgis appointed July 14, 1715; Meletiah Bourne appointed July 14, 1715; Samuel Sturgis appointed June 27, 1719; Nathaniel Freeman appointed June 27, 1719; Josiah Edson appointed March 16, 1721-2; Jacob Thompson appointed March 16, 1721-2; Joseph Doane appointed January 9, 1722-3; Meletiah Bourne appointed December 15, 1724; Samuel Sturgis appointed December 15, 1724; Nathaniel Freeman appointed December 15, 1724; Nathaniel Freeman appointed April 10, 1729; Samuel Sturgis appointed April 10, 1729; Samuel Sturgis appointed December 24, 1730; Nathaniel Freeman appointed December 24, 1730; Samuel Sturgis appointed September 1, 1731; John Doane appointed June 22, 1736; John Davis appointed June 22, 1736; John Russell appointed December 21, 1739; David Crocker appointed January 27, 1742-3; Thomas Winslow ap-

pointed September 13, 1753; Roland Robinson appointed December 19, 1759; Roland Robinson appointed January 21, 1762; Roland Cotton, appointed January 22, 1762; Roland Cotton appointed April 7, 1763; John Gorham, appointed June 20, 1765; Isaac Hinckley appointed May 9, 1770; Chillingworth Foster appointed May 9, 1770; Joseph Nye appointed May 9, 1775.

The following short sketches of the standing Judges are worthy of a place in this narrative :

Barnabas Lothrop was son of Rev. John Lothrop, who came from Lowthropp, Yorkshire, in 1634 and settled first in Scituate and in 1639 in Barnstable. He was born in Scituate in 1636 and baptized June 6 in that year. He was a Deputy in the Colonial Court from 1675 to 1685 and Judge of Probate for Barnstable County from 1702 to 1714. He was also an Assistant from 1681 to 1686 and one of the Council of Governor Phipps. He served on the Common Pleas bench from December 7, 1692, until his death, October 26, 1715.

John Freeman, son of Edmund, was born in England in 1622, and came to New England with his father. He settled first in Barnstable, but removed to Eastham about 1650. He was an Assistant in 1666, 1678, 1682 and 1686. He resigned his seat on the bench in 1695 and died October 28, 1719. It is possible that the Judge was his son, though considering his vigorous old age, it is not improbable that he was appointed Judge at the age of seventy.

John Thatcher, was son of Anthony, who came from Salisbury, England, in 1635 and settled first in Marblehead and later in Yarmouth, Mass. He was born in 1639 and sat on the bench from December 7, 1692, until his death, May 8, 1713.

Stephen Skiffe was perhaps of Sandwich, and continued on the bench until 1710.

Jonathan Sparrow was born in England and came to Plymouth with his brother Richard and mother Pandora, in 1632. The family removed to Eastham in 1656, and he served on the Inferior Court bench until 1702.

John Otis was grandson of General John, who was born in Barnstable, Devonshire, in 1581, and came to Hingham in 1635 and son of John, who was born in England in 1620 and came with his father to Hingham, Scituate and Barnstable. Judge Otis was born in Scituate in 1657 and served on the Inferior Court bench from 1702 until his death, November 30, 1727, being thirteen years Chief Justice. At the time of his death he was also Judge of Probate, having been appointed in 1714. He was grandfather of James Otis, the patriot, so-called.

William Bassett was son of William, of Sandwich, and grandson of William, who came to Plymouth in the ship *Fortune* in 1621. He was Marshal of Plymouth Colony at the time of its union with the Massachusetts Colony in 1692. He served on the bench from 1710 until his death, which occurred at Sandwich, September 29, 1721, in the sixty-fifth year of his age. He was also Register of Probate from 1702 to 1721.

John Gorham was son of John, who was born in Benefield, Northamptonshire, England, in 1620, and coming to Plymouth, married, in 1643, Desire, daughter of John Howland. He was born in Marshfield, Mass., February 20, 1651-2, and sat on the bench from 1711 to 1714. He served with his father in King Philip's War, and in the Canada expedition of 1690 was Captain and Lieutenant Colonel.

Daniel Parker was of Barnstable, and remained on the Inferior Court bench from 1713 to his death, December 23, 1728, at the age of fifty-nine years.

Of Thomas Paine the writer knows nothing, except that he was an Inferior Court Judge from 1714 to 1721.

Of Nathaniel Freeman the writer knows nothing, except that he was appointed Judge in 1715 to succeed Barnabas Lothrop.

Isaac Lothrop, son of Meletiah and Sarah (Farrar) Lothrop, was born in Barnstable, Mass., June 23, 1674, and married, in 1698, Elizabeth, daughter of Jonathan Barnes, of Plymouth. He remained on the bench from 1721 to 1740.

Ezra Bourne, appointed December 26, 1727, was son of Shearjashub Bourne, of Sandwich, and grandson of Richard, one of the early settlers of that town. He was several years Chief Justice, and died in September, 1764, aged eighty-eight years.

Peter Thacher, appointed Judge April 10, 1729, and Chief Justice September 2, 1731, was probably son of Peter Thacher, of Yarmouth, and was born in 1669. Judge Washburn errs in stating that he was son of John Thacher, born in 1645 and died at the age of seventy-one. If he were the son of John, and born in 1645, he would have been eighty-four years of age when appointed. He sat on the bench until 1736 and died in 1739.

Joseph Lothrop, appointed in 1729, was son of Meletiah and brother of Judge Isaac Lothrop. He was born in Barnstable, December 15, 1675, and remained on the bench until his death, February 11, 1747-8.

Shubael Baxter, appointed in 1731, was in 1739 a Special Justice of the Nantucket Common Pleas Court. The writer knows nothing more of his career.

John Otis, Jr., son of Chief Justice John Otis, was born in Barnstable, in 1714, and was appointed Judge in 1746. He was also a Representative and member of the Council, and died May 4, 1758.

David Crocker, appointed Judge in 1747, was son of Job and Hannah (Taylor) Crocker, and was born in Barnstable, Mass., September 5, 1697. He graduated at Harvard in 1716, and remained on the bench until 1758. He married, first, November 12, 1724, Abigail, daughter of David Loring, and, second, January 27, 1757, Mrs. Abigail Stuart, and died in 1764.

Thomas Smith, appointed in 1758, belonged to Sandwich and was a physician. He held office until the Revolution, and in 1785, was reappointed to the reorganized court.

John Thacher, appointed in 1758, was probably a brother of Judge Peter Thacher above mentioned, and was born in Barnstable in January, 1674. He was also Register of Deeds, and died March 17, 1764.

Thomas Winslow, appointed in 1758, was son of Kenelm and Bethiah (Hall) Winslow, and was born in Yarmouth, Mass. He remained on the bench until the Revolution.

Sylvanus Bourne, appointed in 1758, was son of Mel-etiah Bourne, and was born in Sandwich, in 1693. He was Register of Probate from 1729 to 1740, and Judge of Probate from 1740 to 1764. During a part of his service on the bench he was Chief Justice. He died September 18, 1763.

James Otis, appointed Chief Justice in 1764, was son of John and Mercy (Bacon) Otis, and was born in Barnstable, in 1702. He became eminent as a lawyer, and in 1748 was appointed Attorney General, holding that office one year. He was Speaker of the House of Representatives in 1760, and in 1764 was appointed Judge of Probate as well as Chief Justice of the Common Pleas Court. He married Mary, daughter of Joseph Allyne of Wethersfield, Conn., and James Otis, the patriot, was his son. He died in November, 1778.

Edward Bacon, appointed in 1764, was son of Samuel and Mary (Huckins) Bacon, and was born in Barnstable, January 23, 1714-15. He married, September 7, 1744, Patience, daughter of Benjamin Marston, and died March 16, 1783. He remained on the bench until the Revolution.

Daniel Davis, appointed in 1775, was son of Joseph and Hannah (Cobb) Davis, and was born in Barnstable, September 28, 1713. He married, first, Mehitabel, daughter of Thomas Lothrop, and, second, Mehitabel Sturgis. He was a Representative and Judge of Probate and died April 22, 1799.

Nathaniel Freeman, appointed in 1775, was a physician and lived in Barnstable. He held many offices besides that of Judge. He was born in Dennis, April 8, 1741 and later studied law with James Otis. He was Judge of Probate, a member of the House of Representatives, and a member of Congress from 1795 to 1799.

Of Richard Baxter, appointed in 1775, the writer knows nothing.

Berkshire County was incorporated April 21, 1761, and the act of incorporation provided that the town of Sheffield should be the shire and the county offices were located in the North Parish of that town, which in June, 1761, was incorporated as the town of Great Barrington. Thus Great Barrington became the shire, and the courts were appointed to be held in that town the last Tuesday in April and the first Tuesday in September, and at Pittsfield on the first Tuesdays in March and December. The Judges of the Inferior Court of Common Pleas appointed for the County were Joseph Dwight of Great Barrington, Chief Justice in 1761, William Williams of Pittsfield, Associate Justice in 1761 and Chief Justice in 1765, Timothy Woodbridge of Stockbridge, Associate Justice in 1761, John Ashley of Shef-

field, Associate, 1765, Perez Marsh of Dalton, Associate, 1765, John Ashley of Sheffield, 1769, John Bacon of Stockbridge, Associate, 1769, William Whiting of Great Barrington, Associate, 1769, John Brown of Great Barrington, Associate, 1769, William Whiting of Great Barrington, Associate, 1781, Jahleel Woodbridge of Stockbridge, Associate, 1781, and James Barker of Lanesboro, Associate, 1781. The Judges met at the house of Judge Woodbridge in Stockbridge, July 13, 1761, and appointed Elijah Dwight of Great Barrington Clerk of the Courts, and Mark Hopkins Register of Deeds. The first sessions of the Court in Great Barrington were held in the meeting house, and those in Pittsfield in a large room in Fort Anson. In 1764 and 1765 a courthouse was built in Great Barrington near the middle of Main Street opposite Castle Street. Thus county affairs stood until after the Revolution.

Joseph Dwight, appointed Chief Justice in 1761, was born in Hatfield, Mass., October 16, 1703, and graduated at Harvard in 1722. He was admitted to the bar at Worcester in 1731 and was the first member of the Worcester County bar. He settled in Brookfield and was at one time Speaker of the House of Representatives of which he was a member eleven years. In 1743 he was appointed Judge of the Common Pleas Court for Worcester County but resigned in 1751 and removed to Stockbridge. He afterwards removed to Great Barrington and remained on the bench as Chief Justice of the Berkshire County Court of Common Pleas until his death, June 9, 1765. He was a Brigadier General at the capture of Louisburg in 1745 and served in 1756 at Lake Champlain in the Second French war.

William Williams, appointed Associate in 1761, and on the death of Joseph Dwight, 1765, Chief Justice, was one of the earliest settlers of Pittsfield, and rep-

resented that town for many years in the General Court. He was appointed Judge of Probate for Berkshire County in 1765, and after the reorganization of the Court, having served until that time, was reappointed Chief Justice in 1781. He died April 5, 1788.

Timothy Woodbridge, appointed Associate in 1761, was born in 1707, and was a schoolmaster among the Indians, and Agent and Superintendent of Indian affairs. He was appointed one of the mandamus Counsellors, but refused to accept. He remained on the bench until his death, at his home in Stockbridge, May 16, 1774.

John Ashley, appointed Associate in 1765, and re-commissioned in 1769, was the son of John and born in Westfield in 1710. He graduated at Yale in 1732, and was admitted to the Hampshire County bar in 1732. He contracted with the Indians in 1734 for the purchase of the south part of what is now Berkshire County for £460, three barrels of cider and thirty quarts of rum, and subsequently for a strip of land, two miles wide and twenty-six miles long, from Westfield to the Housatonic. He removed to Sheffield before his appointment to the bench. He died September 1, 1803.

Perez Marsh graduated at Harvard in 1748, and was one of the early settlers of the town of Dalton. He was a physician and was appointed Associate in 1765, holding his seat on the bench until the Revolution.

John Bacon, appointed Associate in 1769, was born in Canterbury, Conn., in 1737, and graduated at Princeton in 1765. He studied divinity and preached in Somerset County, Maryland, in 1768, and was settled over the Old South Church in Boston, September 25, 1771. In 1775 he removed to Stockbridge, and was a Representative, member of the Senate, and its President in 1806-7, and a member of Congress from 1801 to 1803.

On the 16th of February, 1779, he was appointed Judge of the Berkshire Court of Common Pleas, and died in Stockbridge October 25, 1829.

Jahleel Woodbridge, son of Joseph of Princeton, graduated at Princeton in 1761, and settled in Stockbridge. He was a Representative, and died in 1796.

William Whiting, appointed Associate in 1769, and recommissioned in 1779, was son of William Whiting, and was born in Bozrah, Conn., April 8, 1730. He settled as a physician in Great Barrington, and died December 8, 1792.

The Judges of the Inferior Court of Common Pleas for Bristol County under the Province charter were as follows :

John Saffin, appointed December 7, 1692; Thomas Leonard, appointed December 7, 1692; Nicholas Peck, appointed December 7, 1692; John Browne, appointed December 7, 1692; Nathaniel Byfield, appointed August 7, 1701; Ebenezer Brenton, appointed June 29, 1702; Benjamin Church, appointed September 30, 1708; Henry Mackintosh, appointed December 28, 1709; Nathaniel Payne, appointed August 24, 1710; Simon Davis, appointed January 1, 1713-14; George Leonard, appointed December 10, 1715; Nathaniel Blagrove, appointed March 19, 1723-4; Seth Williams, appointed June 23, 1724; Samuel Vyall, appointed December 2, 1724; George Leonard, 2d, appointed December 18, 1725; Nathaniel Hubbard, appointed June 18, 1728; Thomas Church, appointed August 22, 1729; Job Almy, appointed December 11, 1740; Stephen Paine, appointed February 8, 1745-6; Ephraim Leonard, appointed June 27, 1747; Samuel Willis, appointed April 18, 1749; Timothy Fales, appointed May 23, 1760; James Williams, appointed May 23, 1760; Zephaniah Leonard, appointed January 24, 1761; Elisha Tobey,

appointed June 18, 1766; William Spconer, appointed June 18, 1781; Thomas Durfee, appointed June 18, 1781; Benjamin Williams, appointed June 18, 1781; William Baylies, appointed June 18, 1781; David Cobb, appointed June 18, 1781; George Leonard, appointed June 18, 1781.

The special justices appointed at various times were Job Almy, appointed January 9, 1735-6; Perez Bradford, appointed December 11, 1740; Nathaniel Hubbard, appointed April 5, 1745; Thomas Terry, appointed June 27, 1747; Samuel Willis, appointed June 27, 1747; Thomas Bowen, appointed August 12, 1749; John Godfrey, appointed August 12, 1749; Samuel Willis, appointed January 24, 1761; Samuel Willis, appointed November 24, 1761; Thomas Gilbert, appointed February 17, 1763; Thomas Durfee, appointed 1775; George Godfrey, appointed 1775; Thomas Durfee, appointed 1777; David Cobb, appointed 1781; Ezra Richmond, appointed 1781; Shubael Peck, appointed 1781; Samuel Tobey, appointed 1781; Appollos Leonard, appointed 1781.

John Saffin, appointed Judge of Inferior Court of Bristol County, December 7, 1692, was born in England, and coming to Massachusetts about 1650, first settled in Scituate. He afterwards removed to Boston and was Speaker of the House of Representatives in 1686. In 1688 he removed to Bristol, then the shire of Bristol County, but now in Rhode Island, and very shortly after was appointed Judge of Probate for Bristol County, holding that office until 1702. He left the bench and in 1701 was appointed Judge of the Superior Court of Judicature, and held that office one year. He married three times, first, 1668, Martha, daughter of Thomas Willet; second, 1680, Elizabeth, daughter of

Peter Lidget, and third, Rebecca, daughter of Samuel Lee, of Bristol. He died in Bristol, July 29, 1710.

Thomas Leonard, appointed Judge, December 7, 1692, and recommissioned in 1702, was son of James, and was born in Wales, and coming to New England with his father engaged in the business of iron manufacture. He was also a physician and military officer. He remained on the bench until his death in 1713.

Nicholas Peck was of Rehoboth, and was appointed Judge, December 7, 1692, and held office until 1702. He died May 27, 1710.

John Browne, appointed Judge of the Inferior Court December 7, 1692, had previously served under Andros as Judge and also in 1689 after the accession of William and Mary. He remained on the bench until 1709.

Nathaniel Byfield, appointed Judge August 7, 1701, has been already noticed as Judge of the Admiralty Court.

Ebenezer Brenton, appointed Judge June 29, 1702, held office until 1708 and was also Register of Probate for Bristol County from 1715 to 1721.

Benjamin Church, appointed Judge September 30, 1708, was son of Richard and Elizabeth (Warren) Church and was born in Duxbury, Mass., in 1639. He removed in 1674 to Little Compton, then in Bristol County and afterwards to Bristol and finally to Fall River. He represented Bristol in the Plymouth Colony General Court, and as a soldier gained distinction in King Philip's war. He held office as Judge under Andros. He remained on the bench of the Inferior Court until 1715 and died January 17, 1717-18.

Henry Mackintosh, appointed Judge December 28, 1709, remained on the bench until 1725, when he was succeeded by George Leonard.

Nathaniel Payne, appointed Judge August 24, 1710,

was a Swansea man, but he removed to Bristol. He held also the office of Judge of Probate from 1710 to 1715. He succeeded Nathaniel Byfield on the bench of the Inferior Court and held office until 1729, a part of the time as Chief Justice.

Simon Davis, appointed Judge in 1713-14 to succeed Thomas Leonard, remained on the bench until 1715.

George Leonard, of Norton, appointed Judge December 10, 1715, was son of Judge Thomas Leonard, and sat on the bench until his death, September 5, 1716.

Nathaniel Blagrove, appointed Judge March 19, 1723-4, served only one year. He was Judge of Probate of Bristol County from 1733 to 1747.

Seth Williams, of Taunton, appointed Judge June 23, 1724, was born in 1676. He was Representative nine years and a member of the Council eleven years. After serving as Chief Justice thirty-six years he resigned in 1760 and died in Taunton, May 13, 1761.

Samuel Vvall, appointed Judge December 2, 1724, served until 1728, when he was succeeded by Nathaniel Hubbard.

George Leonard, 2d, appointed Judge December 18, 1725, was son of Judge George Leonard, and remained on the bench until 1740, and was reappointed in 1746, continuing in office until the Revolution. He was also Judge of Probate from 1747 to 1761.

Nathaniel Hubbard, appointed Judge in 1728, has been already noticed as Judge of the Superior Court of Judicature.

Thomas Church, appointed August 22, 1729, was son of Benjamin and Alice (Southworth) Church and was born in Little Compton, then a part of the Plymouth Colony, in 1674. He was also a Representative and remained on the bench until 1745. He died in 1746.

Job Almy of Tiverton, then in Massachusetts, ap-

pointed December 11, 1740, remained on the bench until 1747.

Stephen Paine of Bristol, then in Massachusetts, appointed February 8, 1745-6, graduated at Harvard in 1721, and was a Representative from Bristol. He remained on the bench until 1749, and was also Register of Probate from 1729 to 1749.

Ephraim Leonard, appointed June 27, 1747, was son of George Leonard of Norton and remained on the bench until the Revolution.

Samuel Willis of Dartmouth, appointed April 18, 1749, was born in Dartmouth. He remained on the bench until 1760 and died October 3, 1763.

Timothy Fales, appointed May 23, 1760, graduated at Harvard in 1711. He served on the bench one year and died in 1777.

James Williams of Taunton, appointed Judge May 23, 1760, served until the Revolution. On the reorganization of the Court he was made Chief Justice and died in 1780.

Zephaniah Leonard of Raynham, appointed January 24, 1761, received an honorary degree of Master of Arts from Harvard in 1763, and served until the Revolution. He died in 1814.

Elisha Tobey, appointed Judge June 18, 1766, graduated at Harvard in 1743. He served on the bench until the Revolution.

William Spooner, appointed in 1781, was probably of New Bedford.

Thomas Durfee, appointed in 1781, was probably of Little Compton.

Of Benjamin Williams, appointed in 1781, the writer knows nothing.

William Baylies, appointed in 1781, was probably Dr. William Baylies of Dighton who graduated from Har

vard in 1760 and was the father of Hon. Wm. Baylies, an eminent lawyer of Plymouth County and member of Congress, and Hon. Francis Baylies of Taunton, the author of a history of the Old Colony.

David Cobb of Taunton, appointed in 1781, was also a distinguished military officer. He defeated the attempts of the insurgents in Shays' Rebellion to prevent the session of the Court of which he was the presiding Judge, declaring that he would either sit as Judge or die as General.

George Leonard, appointed in 1781, was the son of George Leonard, 2d, and grandson of George Leonard, both of whom preceded him on the Common Pleas bench.

The county of Dukes County was incorporated June 22, 1695. The act of incorporation provided "that the Islands of Martha's Vineyard, Elizabeth Islands, the island called Noman's Land, and all the dependencies formerly belonging to Dukes County (the Island of Nantucket only excepted) shall be, remain and continue to be, one county to all intents and purposes, by the name of Dukes County; and all appeals from any judgment or judgments given, or to be given, in any of the Inferior Courts of Common Pleas within the said County shall henceforth be heard and tried at the Superior Court of Judicature, to be holden from time to time at Plymouth, within the neighboring County of Plymouth, any law, usage or custom to the contrary notwithstanding; the jurors to serve at said Superior Court of Judicature to be from time to time chosen and summoned out of the several towns within the said County of Plymouth, and Dukes County, according to the direction in the law in such case provided."

The Judges of the Inferior Court of Common Pleas for Dukes County were as follows:

Matthew Mayhew, appointed December 7, 1692; Thomas Mayhew, appointed December 7, 1692; Richard Sarson, appointed December 7, 1692; James Allyn, appointed December 7, 1692; John Coffin, appointed October 16, 1696; Benjamin Skiffe, appointed September 6, 1699; Joseph Norton, appointed June 29, 1702; Paine Mayhew, appointed October 27, 1713; Ebenezer Allen, appointed December 10, 1715; Zacheus Mayhew, appointed April 16, 1718; John Chipman, appointed June 29, 1722; Enoch Coffin, appointed January 24, 1727-8; John Allen, appointed May 4, 1733; Samuel Norton, appointed May 4, 1733; John Sumner, appointed April 15, 1748; Ebenezer Smith, appointed January 24, 1761; John Newman, appointed October 16, 1761; Matthew Mayhew, 2d, appointed January 21, 1762; Josiah Tilton, appointed June 8, 1764; Joseph Mayhew, appointed December 10, 1771; Joseph Mayhew, appointed 1775; James Athearne, appointed 1775; John Worth, appointed 1775; Shubael Cottle, appointed 1775; Ebenezer Smith, appointed 1775.

The special justices of the court were John Worth, appointed December 24, 1730; Benjamin Smith, appointed December 24, 1730; Joseph Lothrop, appointed July 6, 1732; John Thacher, appointed July 6, 1732; John Thacher, appointed July 7, 1732; Joseph Lothrop, appointed July 7, 1732; Benjamin Smith, appointed February 21, 1733-4; Ebenezer Norton, appointed February 21, 1733-4; Jabez Athearne, appointed January 15, 1741-2; Ebenezer Norton, August 26, 1757; Josiah Tilton, appointed October 16, 1761; John Worth, appointed December 10, 1771.

Matthew Mayhew, appointed Judge of the Inferior Court of Common Pleas for Dukes County, December 7, 1692, was son of Thomas Mayhew, and grandson of Thomas for many years Governor of the Vineyard, and

adjacent islands. He succeeded his grandfather as Governor in 1681, and also preached to the Indians. He remained on the bench until 1700 and was also Judge of Probate from 1696 to 1710 the year he died.

Thomas Mayhew, appointed Judge December 7, 1692, was brother of Matthew, and continued on the bench until his death, July 21, 1715.

Richard Sarson, appointed Judge December 7, 1692, held office until 1700.

John Allyn, or Allen, appointed Judge December 7, 1692, may be the person of that name who graduated at Harvard in 1689. He sat on the bench until his death, July 25, 1714, at the age of seventy-seven.

John Coffin, appointed Judge October 16, 1696, served until 1702, and died September 5, 1711.

Benjamin Skiffe, appointed Judge September 6, 1699, was also Judge of Probate from 1715 to 1718. He sat on the bench until his death, February 18, 1718.

Joseph Norton, appointed Judge June 29, 1702, sat on the bench until 1722, and died January 30, 1741.

Paine Mayhew, appointed Judge October 27, 1713, was also Judge of Probate from 1718 to 1733. He sat on the bench until about 1730, and died May 8, 1761.

Ebenezer Allen, appointed Judge December 10, 1715, was son of James Allen, and was also sheriff in 1701-2. He died May 14, 1733.

Zacheus Mayhew, appointed Judge April 16, 1718, sat on the bench until 1760. He was also Judge of Probate from 1733 to 1760. He died January 3, 1760, at the age of seventy-five.

John Chipman, appointed Judge June 29, 1722, graduated at Harvard in 1711. He died in 1775.

Enoch Coffin, appointed Judge January 24, 1727-8, was of Edgartown, and graduated at Harvard in 1714. He served on the bench until his death in 1761.

John Allen, appointed Judge May 4, 1733, sat on the bench until 1761. He was also sheriff from 1715 to 1733. He died October 17, 1767.

Samuel Norton, appointed Judge May 4, 1733, served until 1748, and died September 5, 1760.

John Sumner, appointed Judge April 15, 1748, graduated at Harvard in 1723. He sat on the bench until the Revolution and died in 1787.

Ebenezer Smith, appointed Judge January 24, 1761, served until about 1770, and died October 15, 1771, at the age of seventy-one.

John Newman, appointed Judge October 16, 1761, graduated at Harvard in 1740 and studied divinity. He sat on the bench two years and died December 1, 1763.

Matthew Mayhew, 2d, probably a grandson of Judge Matthew, above mentioned, was appointed Judge January 21, 1762, and served until the Revolution, and was Chief Justice of the Court. He was also Judge of Probate from 1760 to the Revolution.

Josiah Tilton, appointed Judge June 8, 1764, served until the Revolution.

The Judges of the Inferior Court of Common Pleas for Essex County under the Province charter were as follows :

Bartholomew Gedney, appointed December 7, 1692 ; John Hathorne, appointed December 7, 1692 ; Samuel Appleton, appointed December 7, 1692 ; Jonathan Corwin, appointed December 7, 1692 ; William Browne, appointed June 4, 1696 ; Daniel Pierce, appointed June 3, 1698 ; Nathaniel Saltonstall, appointed June 30, 1702 ; Jonathan Corwin, reappointed October 23, 1702 ; John Appleton, appointed June 14, 1702 ; Thomas Noyes, appointed June 10, 1707 ; John Higginson, appointed June 15, 1708 ; Samuel Browne, appointed December 9,

1715; John Burrill, appointed July 15, 1720; Josiah Wolcott, appointed March 9, 1721-2; Timothy Lindall, appointed April 10, 1729; Theophilus Burrill, appointed June 21, 1733; Thomas Berry, appointed June 21, 1733; Benjamin Marston, appointed November 10, 1737; Benjamin Lynde, Jr., appointed October 5, 1739; John Choat, appointed February 8, 1745-6; Henry Gibbs, appointed June 25, 1754; John Tasker, appointed April 20, 1754; Benjamin Pickman, appointed September 14, 1756; Caleb Cushing, appointed March 8, 1759; Stephen Higginson, appointed June 24, 1761; Nathaniel Ropes, appointed November 19, 1761; Andrew Oliver, appointed November 19, 1761; William Bourne, appointed February 5, 1766; William Browne, appointed September 17, 1770; Peter Frye, appointed January 15, 1772; John Lowell, appointed October 28, 1775; Caleb Cushing, appointed October 28, 1775; Benjamin Greenleaf, appointed October 28, 1775; Azor Orne, appointed October 28, 1775; Timothy Pickering, appointed 1779; Samuel Holton, appointed 1779; Caleb Cushing, appointed 1779; Benjamin Greenleaf, appointed 1779; Benjamin Greenleaf, appointed September 20, 1881; Samuel Holton, appointed September 20, 1881; Samuel Phillips, appointed September 20, 1881.

The following Special Justices of the Inferior Court of Common Pleas were appointed at various times:

Samuel Appleton, appointed October 26, 1711; John Burrill, appointed October 26, 1711; Samuel Appleton, appointed September 16, 1715; John Burrill, appointed September 16, 1715; John Wainwright, appointed September 30, 1725; Theophilus Burrill, appointed September 30, 1725; Theophilus Burrill, appointed April 11, 1729; William Gedney, appointed April 11, 1729; Theophilus Burrill, appointed August 25, 1731; Richard Kent, appointed August 25, 1731; Nathaniel Coffin, ap-

pointed June 28, 1734; Benjamin Lynde, Jr., appointed June 28, 1734; Epes Sargeant, appointed July 5, 1740; David Appleton, appointed July 5, 1740; David Appleton, appointed August 18, 1744; Epes Sargeant, appointed August 18, 1744; John Choat, appointed January 19, 1744-5; John Greenleaf, appointed March 28, 1755; Epes Sargeant, appointed March 11, 1762; Daniel Appleton, appointed March 11, 1762; Jacob Fowle, appointed February 17, 1763; Samuel Rogers, appointed February 17, 1763; William Browne, appointed February 5, 1766.

Bartholomew Gedney, appointed Judge of the Inferior Court of Common Pleas December 7, 1692, has already been noticed in connection with the Court of Oyer and Terminer organized to try the witchcraft cases.

John Hathorne, or Hawthorne, appointed Judge December 7, 1692, was son of William, and born in Salem about 1641. He was Assistant from 1684 to 1686 and was appointed in 1702 Judge of the Superior Court of Judicature, holding that office until 1712. He died in Boston May 10, 1717.

Samuel Appleton, appointed December 7, 1692, was born in England in 1625 and came to Massachusetts in 1635. He was a Representative, and a member of the Council from 1681 to 1686. He sat on the bench until his death, May 15, 1696.

Jonathan Corwin, appointed December 7, 1692, and reappointed October 23, 1702, has been noticed as a Judge of the Superior Court of Judicature.

Daniel Pierce of Newbury, appointed Judge June 3, 1698, was a Representative in the General Court and a Colonel in the Militia. He was a member of the Committee of Safety appointed in 1689 and sat on the bench until his death January 22, 1704.

William Browne, appointed Judge June 4, 1696, was son of William of Salem and born in 1639. He was a Representative and member of the Council and died February 14, 1716.

Nathaniel Saltonstall, appointed Judge June 30, 1702, was son of Richard and Muriel Saltonstall, and was born in Ipswich in 1639. He was an Assistant from 1679 to 1686, and in 1692 declined an appointment as Judge of the Court of Oyer and Terminer organized to try the witchcraft cases. He was named in the Province Charter as one of the Council and continued a member until 1694. He graduated at Harvard in 1659 and settled in Haverhill. He remained on the bench until his death, May 21, 1707.

John Appleton, appointed June 14, 1704, was a nephew of Judge Samuel Appleton noticed above, and son of John. He sat on the bench until 1733 when he resigned.

Thomas Noyes, appointed June 10, 1707, was of Newbury. He was a Representative and member of the Council. He remained on the bench until April 10, 1729, and died April 12, 1730.

John Higginson, appointed June 15, 1708, was son of Rev. John Higginson of Salem, and was born in that city in 1647. He was a merchant and member of the Council. He remained on the bench until his death March 23, 1719-20.

Samuel Browne, appointed December 9, 1715, was son of Judge William Browne, noticed above, and was born in Salem October 8, 1669. He was a Representative, member of the Council and a Militia Colonel. He sat on the bench, a part of the time as Chief Justice, until his death June 16, 1731.

John Burrill, appointed July 15, 1720, was born in Lynn in October, 1658. He was a member of the Coun-

cil and Speaker of the House of Representatives and remained on the bench until his death, December 10, 1721.

Josiah Wolcott, appointed March 9, 1721-2 was a merchant of Salem and at one time a Representative. He remained on the bench until his death, February 2, 1728-9.

Timothy Lindall, appointed April 10, 1729, was born in Salem November 4, 1677, and graduated at Harvard in 1695. He was a Representative and member of the Council. He remained on the bench until his resignation in 1754, and died October 25, 1760.

John Wainwright, appointed April 10, 1729, was born in Ipswich, Mass., in 1691, and graduated at Harvard in 1709. He was a merchant, a Representative, Clerk of the House of Representatives and Colonel in the Militia. He remained on the bench until his death September 1, 1739.

Theophilus Burrill, appointed June 21, 1733, was born in Lynn May 21, 1709, and served until his death in 1737.

Thomas Berry, appointed June 21, 1733, was born in Boston and graduated at Harvard in 1712. His family removed to Ipswich and after graduation he settled as a physician in that town. He was a Representative, member of the Council, and was Judge of Probate of Essex County from October 5, 1739, to August 10, 1756. He remained on the bench until his death August 10, 1756.

Benjamin Marston, appointed November 10, 1737, was born in Salem about 1670 and graduated at Harvard in 1689. He was a joint Sheriff of Essex County with John Denison from July 3, 1722, to December 12, 1728, and sole Sheriff from the latter date to January 24, 1745-6. He remained on the bench until 1754. He

married Elizabeth, daughter of Isaac and Sarah (Wensley) Winslow and died in Manchester, Mass., in 1754.

Benjamin Lynde, Jr., appointed October 5, 1739, has been already noticed as a Judge of the Superior Court of Judicature.

John Choat or Choate, appointed February 8, 1745-6, was of Ipswich. He was a Representative, member of the Council, and was Judge of Probate of Essex County from September 14, 1756, to February 5, 1766. He sat on the bench until his death in 1766.

Henry Gibbs, appointed June 25, 1754, was born in Watertown, Mass., in May, 1709, and graduated at Harvard in 1726. He was a merchant in Salem, Representative and Clerk of the House. He remained on the bench until his death in February, 1759.

John Tasker, appointed April 20, 1754, belonged to Marblehead and was at one time Representative. He remained on the bench until his death November 9, 1761.

Benjamin Pickman, appointed September 14, 1756, was born in Salem in 1708. He was a merchant, Colonel in the Militia, Representative and member of the Council. He remained on the bench until 1761, and died in Salem August 20, 1774.

Caleb Cushing, appointed March 8, 1759, was a Salisbury man and served on the bench until the Revolution. After the reorganization of the Court in 1775, he was appointed Chief Justice.

Stephen Higginson, appointed June 24, 1761, was born in Salem in July, 1716, and died on the 12th of October, following his appointment.

Nathaniel Ropes, appointed November 19, 1761, has been noticed as Judge of the Superior Court of Judicature.

Andrew Oliver, appointed November 19, 1761 was born in Salem November 13, 1731, and graduated at

Harvard in 1749. He was son of Andrew Oliver, Lieutenant Governor of the Province from 1771 to 1774. He was a Representative and declined an appointment as Mandamus Councillor. He was a founder of the American Academy of Arts and Sciences and a member of the Philosophical Society of Philadelphia. He remained on the bench until the Revolution and died in 1799.

William Bourne, appointed February 5, 1766, was son of Sylvanus and Mercy (Gorham) Bourne and was born in Barnstable, Mass., February 27, 1723-4. He graduated at Harvard in 1743. He served at the capture of Louisburg in 1757 and settled as a merchant in Marblehead. He married first a daughter of Lieutenant Governor Hazard and second a daughter of Judge John Tasker. He remained on the bench until his death August 12, 1770.

William Browne, appointed September 17, 1770, has been already noticed as a Judge of the Superior Court of Judicature.

Peter Frye, appointed January 15, 1772, was born in Andover in 1723 and graduated at Harvard in 1744. He removed to Salem and taught school, and was also Colonel in the Militia and Register of Probate for Essex County from September 29, 1773, to the Revolution. He remained on the bench until the Revolution and being a Loyalist went to England where he died in 1820.

John Lowell, appointed after the reorganization of the Court in 1775, was born in Newburyport, June 17, 1743, and graduated at Harvard in 1760. He was Judge of the United States Court of Appeals, Judge of the United States District Court for Massachusetts, Chief Justice of the United States Circuit Court and Delegate to Continental Congress. He died in Roxbury, May 6, 1802.

Benjamin Greenleaf, appointed October 28, 1775, was born in Newburyport about 1731 and graduated at Harvard in 1751. He was recommissioned in 1777 and died in 1799.

Azor Orne, appointed October 28, 1775, did not take his seat.

Timothy Pickering was born in Salem, July 17, 1745, and graduated at Harvard in 1763. He was Judge of the Prize Court for Suffolk, Essex and Middlesex, Colonel of a Regiment in 1776, member of the Continental Board of War and Quarter-Master General. In 1791 was Postmaster General, in 1795 Secretary of War and Secretary of State. In 1802 was made Judge of Common Pleas, in 1803 was United States Senator, from 1813 to 1817 was member of Congress, and died in Salem, January 29, 1829.

Samuel Holton was of Danvers.

Samuel Phillips, appointed September 20, 1781, was nephew of John Phillips, the founder of Phillips Academy at Exeter and son of Samuel Phillips, of Andover. He was born in North Andover, Mass., February 7, 1751, and graduated at Harvard in 1771. He was a member of Provincial Congress and of the Constitutional Convention of 1779, State Senator twenty years, President of the Senate fifteen years, Commissioner of the State in Shays' Rebellion and Lieutenant Governor at the time of his death February 10, 1802. He organized Phillips Academy at Andover and secured an endowment for it from his father who was a member of the Executive Council, and left to his native town \$5,000 for educational purposes. He was also one of the founders of the American Academy of Arts and Sciences.

The Judges of the Inferior Court of Common Pleas for Hampshire County during the Provincial period were as follows:

John Pynchon, appointed December 7, 1692; Peter Tilton, appointed December 7, 1692; Samuel Partridge, appointed December 7, 1692; Joseph Hawley, appointed December 7, 1692; John Pynchon, appointed October 16, 1696; Samuel Partridge, appointed October 16, 1696; Joseph Hawley, appointed October 16, 1696; Joseph Parsons, appointed October 16, 1696; John Pynchon, appointed July 17, 1699; Samuel Partridge, appointed July 17, 1699; Joseph Hawley, appointed July 17, 1699; John Pynchon appointed June 29, 1702; Samuel Partridge, appointed June 29, 1702; Joseph Hawley, appointed June 29, 1702; Joseph Parsons, appointed June 29, 1702; John Pynchon, Jr., appointed June 8, 1710; Samuel Porter, appointed June 8, 1711; Samuel Partridge, appointed December 10, 1715; Joseph Parsons, appointed December 10, 1715; John Pynchon, 2d, appointed December 10, 1715; Samuel Porter, appointed December 10, 1715; John Stoddard, appointed June 27, 1719; John Pynchon, 3d, appointed June 29, 1722; John Ashley, appointed January 9, 1722-3; Henry Dwight, appointed October 10, 1729; John Ashley, appointed October 10, 1729; Samuel Partridge, appointed October 10, 1729; John Stoddard, appointed October 10, 1729; Samuel Partridge, appointed December 28, 1732; John Stoddard, appointed December 28, 1732; John Pynchon, 3d, appointed December 28, 1732; John Ashley, appointed December 28, 1732; Ebenezer Pomeroy, appointed 1735; Eleazer Porter, appointed July 2, 1737; Timothy Dwight, appointed July 2, 1737; William Pynchon, Jr., appointed July 2, 1737; William Pynchon, Sr., appointed July 8, 1738; Joseph Pynchon, appointed April 2, 1741; Ephraim Williams, appointed July 21, 1741; Timothy Dwight, appointed November 8, 1748; Josiah Dwight, appointed January 18, 1749-50; Joseph Dwight, appointed January 4, 1753; Joseph

Dwight, appointed January 11, 1758; Israel Williams, appointed January 11, 1758; Josiah Dwight, appointed January 11, 1758; Timothy Dwight, Jr., appointed January 11, 1758; Elijah Williams, appointed June 24, 1761; Thomas Williams, appointed February 1, 1764; Israel Williams, appointed October 26, 1768; Oliver Partridge, appointed October 26, 1768; Timothy Dwight, Jr., appointed October 26, 1768; Thomas Williams, appointed October 26, 1768; Timothy Danielson, appointed December 1, 1777; Eleazer Porter, appointed December 1, 1777; John Bliss, appointed December 1, 1777; Samuel Mather, appointed January 16, 1778.

The Special Justices appointed at various times were as follows:

Luke Hitchcock, appointed July 14, 1721; Eleazer Porter, appointed December 26, 1727; Thomas Hastings, appointed December 26, 1727; William Pyncheon, Jr., appointed August 19, 1738; Israel Williams, appointed August 19, 1738; Elijah Williams, appointed September 13, 1753; Samuel Mather, appointed February 4, 1762; Thomas Williams, appointed February 4, 1762; Eleazer Porter, appointed June 8, 1764.

John Pyncheon, appointed Judge of the Inferior Court of Common Pleas, December 7, 1692, and re-commissioned October 16, 1696, July 17, 1699, and June 29, 1702, was son of William Pyncheon, who removed with his family from Roxbury to Springfield in 1636. He was born in England in 1625 and was Chief Justice of the Court, and died January 17, 1703.

Peter Tilton, appointed December 7, 1692, was of Hadley, and was an Assistant and Representative under the Colony Charter. He remained on the bench until 1694 and died in 1696.

Samuel Partridge, appointed December 7, 1692, and

recommissioned October 16, 1696, July 17, 1699, June 29, 1702, December 10, 1715, October 10, 1729 and December 28, 1732, was born in Hartford, Conn., October 15, 1645. He was by profession a lawyer, and was a Clerk in the Colonial Court. He remained on the bench until his death, December 25, 1740.

Joseph Hawley, appointed December 7, 1692, and recommissioned October 16, 1696, July 17, 1699, and June 29, 1702, was of Northampton, and held office until his death in 1711. He graduated at Harvard in 1674.

Joseph Parsons, appointed October 16, 1696, and recommissioned July 17, 1699, July 29, 1702 and December 10, 1715, was son of Joseph and Mary (Bliss) Parsons, and was born in Springfield, Mass., November 1, 1647. He was a lawyer, and served fourteen years as Representative from Northampton and two years from Springfield. In 1696 he was appointed Judge of the Court of Oyer and Terminer at Northampton for the trial of certain Hudson River Indians for the murder of Richard Church, and again in 1718 one of the Judges of the Court at Northampton for the trial of Ovid Ruchbrock, charged with counterfeiting the bills of credit of Massachusetts. He married in March, 1669, Elizabeth, daughter of Elder John and Abigail (Ford) Strong, and died at Springfield November 29, 1729.

Samuel Porter, appointed June 8, 1711, and recommissioned December 10, 1715, was of Hadley, and died in 1722.

John Pynchon, 2d, appointed Judge June 8, 1710, and recommissioned December 10, 1715, was son of Judge John Pynchon noticed above, and was born in Springfield, October 17, 1647. He was Clerk of the Courts and Register of Deeds, and sat on the bench until his death, April 25, 1721.

John Stoddard, appointed June 27, 1719, and recom-

re-commissioned October 10, 1729, and July 2, 1737, was born in Northampton and graduated at Harvard in 1701. In 1713 he was sent to Quebec to redeem the captives in the French and Indian wars, and in 1736 declined a seat on the bench of the Superior Court of Judicature, and was Judge of Probate for Hampshire County. In 1738 he was made Chief Justice of the Inferior Court, and died June 19, 1748.

John Pynchon, 3d, son of John, 2d, above noticed, was of Springfield, and was appointed June 22, 1722, and re-commissioned December 28, 1732.

Henry Dwight, appointed January 9, 1722-3, and re-commissioned October 10, 1729, was a practising attorney in Hatfield. He served until 1731 and died in 1733.

John Ashley, appointed January 9, 1722-3, and re-commissioned October 10, 1729 and December 28, 1732, has been already noticed as Judge of the Inferior Court of Common Pleas for Berkshire County.

Ebenezer Pomeroy, appointed February 21, 1734-5, was of Northampton, and sat on the bench until 1753. He died in 1754.

Eleazer Porter, appointed July 2, 1737, was of Hadley, and sat on the bench until his death in 1757.

Timothy Dwight, appointed July 2, 1737, and re-commissioned November 8, 1748, and January 11, 1758, was of Northampton, and was admitted to the bar in 1721. He died in 1771.

William Pynchon, Jr., appointed July 2, 1737, was son of Judge John Pynchon, 3d. He served one year, and died in 1783.

William Pynchon, 3d, appointed July 8, 1738, was son of Judge John Pynchon, 2d, and was born in Springfield in 1703. He served until his death in 1742.

Joseph Pynchon, appointed April 2, 1741, was born in Springfield and graduated at Harvard in 1726. He

was a member of the Council and Librarian of Harvard College in 1729 and 1730, and died in 1765.

Ephraim Williams, appointed July 21, 1741, was born in Newton and removed to Stockbridge. He died in Deerfield.

Josiah Dwight, appointed January 18, 1749-50, and recommissioned January 11, 1758, was a cousin of Judge Timothy Dwight, and grandson of Timothy Dwight of Dedham. He remained on the bench until his death in 1768.

Joseph Dwight, appointed January 4, 1753, and recommissioned January 11, 1758, graduated at Harvard in 1722. He was son of Henry Dwight and was born in Hatfield, October 16, 1703. He was admitted to the bar in Worcester in 1731 and removed to Brookfield. He was a Representative and Speaker of the House and Judge of the Inferior Court of Worcester County from 1743 to 1750. Resigning his seat he removed to Stockbridge. He afterwards removed to Great Barrington, and while that town was in Hampshire County was appointed Judge as above stated, in 1753. When Berkshire County was incorporated in 1761 which included Great Barrington, he was appointed Chief Justice of the Inferior Court for that county, remaining on the bench until his death, June 9, 1765 having served as Judge in three counties.

Israel Williams, appointed January 11, 1758, and recommissioned October 26, 1768, was son of Rev. William Williams of Hatfield and was born in 1708. He graduated at Harvard in 1727, and was a Representative from Hatfield, a member of the Council, and Judge of Probate for Hampshire County. He sat on the bench until 1774, a part of the time as Chief Justice and died in 1788.

Elijah Williams, appointed June 24, 1761, was of Deer-

field and graduated at Harvard in 1732. He served two years and died in 1771.

Thomas Williams, appointed February 1, 1764, and recommissioned October 26, 1768, was son of Judge Ephraim Williams, above noticed. He lived in Deerfield and died in 1779.

Oliver Partridge, appointed October 26, 1768, was born in Hatfield, Mass., June 13, 1712, and graduated at Harvard in 1730. He sat on the bench until the Revolution and died in Hadley July 21, 1792.

Timothy Dwight, Jr., appointed October 26, 1768, was born in Northampton. He sat on the bench until 1774 and died in 1776.

Timothy Danielson, appointed December 1, 1777, graduated at Yale in 1756 and was practising law in Brimfield, Mass., at the time of his appointment. He received the degree of Master of Arts from Harvard in 1779 and died in Brimfield in 1791.

Eleazer Porter, appointed December 1, 1777, was of Hadley and probably son of Judge Eleazer Porter above noticed.

John Bliss, appointed December 1, 1777, probably sat on the bench until the organization of the new Court of Common Pleas, July 3, 1782.

Samuel Mather, appointed January 16, 1778, probably graduated at Harvard in 1723. He practised law in Northampton and served only one year on the bench. He was a fellow of the American Academy of Arts and Sciences and died in 1785.

The Judges of the Inferior Court for Middlesex County under the Province Charter were as follows:

John Phillips, appointed December 7, 1692; James Russell, appointed December 7, 1692; Joseph Lynde, appointed December 7, 1692; Samuel Hayman, appointed December 7, 1692; Jonathan Tyng, appointed

June 29, 1702; Francis Foxcroft, appointed June 29, 1709; Jonathan Remington, appointed December 9, 1715; Jonathan Dowse, appointed June 27, 1719; Charles Chambers, appointed June 27, 1719; Francis Fulham, appointed June 27, 1719; Thomas Greaves, appointed June 22, 1733; Francis Foxcroft, appointed March 9, 1737-8; Thomas Greaves, appointed December 21, 1739; Samuel Danforth, appointed July 21, 1741; Chambers Russell, appointed August 19, 1747; Andrew Boardman, appointed April 7, 1752; William Lawrence, appointed June 26, 1755; John Tyng, appointed September 7, 1763; Richard Foster, appointed March 7, 1764; Joseph Lee, appointed May 24, 1769; James Russell, appointed May 17, 1771; John Tyng, appointed November 2, 1775; Henry Gardner, appointed November 2, 1775; John Remington, appointed November 2, 1775; Samuel P. Savage, appointed November 2, 1775; John Tyng, appointed November 27, 1780; Henry Gardner, appointed November 27, 1780; Samuel P. Savage, appointed November 27, 1780; John Remington, appointed November 27, 1780.

The Special Justices of the Inferior Court appointed at various terms were as follows:

Elisha Hutchinson, appointed June 8, 1705; John Foster, appointed June 8, 1705; John Higginson, appointed June 8, 1705; Elisha Hutchinson, appointed February 25, 1708; John Foster, appointed February 25, 1708; John Higginson, appointed February 25, 1708; Penn Townsend, appointed February 25, 1708; Jonathan Tyng, appointed February 25, 1708; Jonathan Dowse, appointed December 3, 1718; Jonas Bond, appointed December 3, 1718; Nathaniel Carey, appointed November 25, 1719; Thomas Greaves, appointed November 25, 1719; Jonas Bond, appointed September 6, 1723; Spencer Phips, appointed September 6, 1723; Spencer

Phips, appointed July 18, 1726; Henry Phillips, appointed August 3, 1729; Francis Foxcroft, appointed March 19, 1729-30; Thomas Greaves, appointed July 9, 1731; Francis Foxcroft, appointed July 9, 1731; Spencer Phips, appointed July 9, 1731; Habijah Savage, appointed December 15, 1732; Jacob Wendell, appointed December 29, 1736; Benjamin Prescott, appointed December 29, 1736; Simon Tufts, appointed July 25, 1741; Ephraim Curtis, appointed July 25, 1741; William Lawrence, appointed August 12, 1749; William Lawrence, appointed June 21, 1751; John Tyng, appointed July 19, 1762; Oliver Fletcher, appointed July 29, 1762; Joseph Lee, appointed March 7, 1764; Samuel Livermore, appointed September 7, 1768; Charles Prescott, appointed September 7, 1768; Josiah Stone, appointed March 27, 1780.

John Phillips, appointed Judge of the Inferior Court December 7, 1692, was born in Charlestown in 1631. He was a Colonial Representative from 1683 to 1686 and one of the Council named in the Province Charter, remaining a member until 1716. He died March 20, 1725, having left the bench December 9, 1715.

James Russell, appointed December 7, 1692, was son of Richard Russell and was born in Charlestown, October 4, 1640. He was a Colonial Assistant and Representative and one of the Council named in the Province Charter. He sat on the bench until April 28, 1709, the day of his death.

Joseph Lynde, appointed December 7, 1692, was born in Charlestown in June, 1636. He was a Representative and Assistant in the Massachusetts Colony and named as a member of the Council in the Province Charter. He remained on the bench until June 27, 1719, and died January 29, 1727.

Samuel Hayman, appointed December 7, 1692, was of

Watertown. He was a Colonial Representative and was named one of the Council in the Province Charter. He was a Representative of Charlestown in 1690 and Watertown in 1692. He remained on the bench until June 29, 1702.

Jonathan Tyng, appointed June 29, 1702, was son of Edmund Tyng and born in 1642. He had been a Councillor under Dudley and Andros. He sat on the bench until June 27, 1719 and died probably at Woburn January 19, 1724.

Francis Foxcroft, appointed June 29, 1709, was born in Cambridge in 1658. He was a Judge under Andros and again as above stated in the Provincial Court of Common Pleas in 1709. He sat on the bench until June 27, 1719.

Jonathan Remington, appointed December 9, 1715, remained on the bench until June 22, 1733, when he was appointed Judge of the Superior Court of Judicature. He graduated at Harvard in 1696 and died in 1745.

Jonathan Dowse, appointed June 27, 1719 was born in Charlestown and graduated at Harvard in 1715. He remained on the bench until July 21, 1741, but the Harvard catalogue fails to give the year of his death.

Charles Chambers, appointed June 27, 1719, remained on the bench until December 21, 1739. He probably was of Charlestown.

Francis Fulham, appointed June 27, 1719, was born in Pelham, a parish of London, in 1669 and came to Massachusetts about 1683. He lived in Weston, Mass., and remained on the bench until June 20, 1755, and died January 18, 1758.

Thomas Greaves, appointed June 22, 1733, and re-commissioned December 21, 1739, has been already noticed as Judge of the Superior Court of Judicature.

Samuel Danforth, appointed July 21, 1741, was son of Rev. John Danforth and was born in Dorchester, November 12, 1696, and graduated at Harvard in 1715. He removed to Cambridge in 1724 where he taught school and was a Selectman from 1733 to 1739. He was a Representative from 1734 to 1738, Councillor from 1739 to 1774, Register of Probate from 1731 to 1745, and Judge of Probate for Middlesex County from 1745 to 1775. He sat on the bench until his death which occurred in Boston October 27, 1777.

Chambers Russell, appointed August 19, 1747, has been already noticed as Judge of the Superior Court of Judicature.

Andrew Boardman, appointed April 7, 1752, was of Cambridge and a Representative and Register of Probate. He sat on the bench until his death, May 30, 1769.

Francis Foxcroft, Jr., appointed March 9, 1737-8, was son of Judge Francis Foxcroft, noticed above, and was born in Cambridge, January 26, 1695. He graduated at Harvard in 1712, and was Judge of Probate for Middlesex County. He sat on the Common Pleas bench until 1764 and died March 28, 1768.

William Lawrence, appointed June 26, 1755, was of Groton, and sat on the bench until September 7, 1763.

John Tyng, appointed September 7, 1763, was born in Dunstable in 1694, and graduated at Harvard in 1725. He was a Representative from Boston ten years and removed to Dunstable about 1760. He remained on the bench until 1774, was recommissioned in 1775 and again in 1780. He was appointed in 1782 Judge of the Middlesex County Court of Common Pleas, and died April 18, 1797.

Richard Foster, appointed March 7, 1764, was of Charlestown and was many years Sheriff of Middlesex

County. He sat on the bench until May 16, 1771, and died in August, 1774.

Joseph Lee, appointed May 24, 1769, graduated at Harvard in 1729. He lived in Cambridge and was appointed Mandamus Councillor, but soon resigned. He remained on the bench until the Revolution and died December 5, 1782.

James Russell, appointed May 17, 1771, was son of Daniel Russell, and born in Charlestown August 5, 1715. He was a Representative from 1746 to 1759, and afterwards a member of the Council. At the Revolution he removed to Dunstable and later to Lincoln, returning finally to Charlestown. He sat on the bench until the Revolution, and died in Charlestown in 1798.

Henry Gardner, appointed November 2, 1775, was of Stowe and graduated at Harvard in 1750. He was recommissioned November 27, 1780, and continued on the bench until his death in 1782.

John Remington, appointed November 2, 1775, and recommissioned November 27, 1780, was probably son of Judge Jonathan, noticed above.

Samuel Phillips Savage, appointed November 2, 1775, and recommissioned November 27, 1780, was born in Boston in 1718, and was President of the Board of War during the Revolution. He removed to Weston, Mass., where he died in December, 1797, having sat on the bench until the organization of the Court of Common Pleas, July 3, 1782.

Before proceeding with the Judges of the Inferior Court of Common Pleas for the County of Nantucket, as that County is now first introduced in connection with the Judiciary of Massachusetts it will be proper to say a word concerning the relations of that Island before its Union with the Massachusetts Province under the charter of 1791. Such an explanation will

also apply to Martha's Vineyard. Nantucket and Martha's Vineyard, as has before been stated, were not included in the Plymouth Colony and were not parts of Massachusetts until the Province charter was issued October 7th in the above year. Nantucket was conveyed in 1641 by James Forrett, the agent of William Earl of Sterling, to Thomas Mayhew and his son Thomas, with full powers to them "and their associates to plant and inhabit upon Nantucket and two other small islands adjacent, and to enjoy the said Islands to them, their heirs and assigns forever." In 1659 Thomas Mayhew sold his interest with certain reservations to Tristram Coffin, Thomas Macey, Christopher Huzzey, Richard Swain, Thomas Barnard, Peter Coffin, Stephen Greenleaf, John Swain and William Pyle for the consideration of thirty pounds and two Beaver hats, one for himself and one for his wife. In 1660 the purchasers perfected their title by a deed from the Indians for twenty-six pounds.

In 1664 Charles the Second granted to "his dearest brother" James, Duke of York, Nantucket and Martha's Vineyard with other territory, and Richard Nicolls was made Deputy Governor under the Duke of York. Until the issue of the Massachusetts Province charter in 1691 these Islands were included within the jurisdiction of New York, and in 1673 Nantucket received from Governor Lovelace, the name of Sherburne, which it continued to bear until 1795.

The Judges of the Inferior Court of Common Pleas, during the provincial period were as follows: John Gardner, appointed October 16, 1696; James Coffin, appointed October 16, 1696; William Geare, appointed October 16, 1696; William Worth, appointed October 16, 1696; Richard Gardner, appointed June 6, 1706; George Gardner, appointed June 8, 1711; George Bun-

ker, appointed December 13, 1715; Joseph Coffin, appointed June 27, 1718; John Coffin, appointed November 25, 1719; Joseph Gardner, appointed June 28, 1728, Josiah Coffin, appointed December 21, 1744; Thomas Brock, appointed January 3, 1744-5; Jonathan Coffin, appointed June 21, 1751; Grafton Gardner, appointed June 21, 1751; Caleb Bunker, appointed June 21, 1751; Obed Huzzey, appointed November 4, 1767; Josiah Coffin, appointed 1775; Grafton Gardner, appointed 1775; Caleb Bunker, appointed 1775; Ebenezer Calef, appointed 1775.

The Special Justices appointed at various times were Ephraim Hunt, appointed October 24, 1712; Isaac Winslow, appointed October 24, 1712; John Cushing, appointed October 24, 1712; Samuel Thaxter, appointed October 24, 1712; Ebenezer Coffin, appointed January 24, 1727-8; Joseph Lothrop, appointed January 24, 1727-8; Ezra Bourne, appointed January 24, 1727-8; Shubael Baxter, appointed January 24, 1727-8; John Thacher, appointed January 24, 1727-8; John Cushing, appointed July 8, 1742; Zacheus Mayhew, appointed July 8, 1742; Sylvanus Bourne, appointed July 8, 1742; Enoch Coffin, appointed July 8, 1742; Stephen Huzzey, appointed July 8, 1775.

John Gardner, appointed Judge October 16, 1696, was also Judge of Probate from 1696 to 1706. He sat on the bench until his death May 6, 1706.

James Coffin, appointed October 16, 1696, sat on the bench until about 1716, and was Chief Justice a part of the time. He was Judge of Probate from 1706 to 1728 and died July 8, 1728.

William Geare, appointed October 16, 1696, served until his death September 23, 1710.

William Worth, appointed October 16, 1696, served until 1718.

Richard Gardner, appointed June 6, 1706 to succeed John Gardner, was Chief Justice and continued on the bench until his death May 8, 1728.

George Gardner, appointed June 8, 1711, succeeded William Geare and was Chief Justice. He was Judge of Probate from 1732 to 1747. He sat on the bench until 1715 and died April 17, 1750.

George Bunker, appointed December 13, 1715, sat on the bench as Judge and Chief Justice until his death November 24, 1744. He was Judge of Probate from 1728 to 1732.

Joseph Coffin, appointed June 27, 1718, died July 15, 1719.

John Coffin, appointed November 25, 1719, to succeed Joseph Coffin, served until his death September 1, 1747.

Joseph Gardner, appointed June 28, 1728, to succeed Richard Gardner, served until his death September 29, 1747.

Josiah Coffin, appointed December 21, 1744, succeeded George Bunker and sat on the bench as Judge and Chief Justice until the Revolution and was reappointed Chief Justice in 1775, serving until 1781.

Thomas Brock, appointed January 3, 1744-5, succeeded Joseph Gardner.

Jonathan Coffin, appointed June 21, 1751, succeeded George Gardner and sat on the bench until 1767.

Grafton Gardner, appointed June 21, 1751, sat on the bench until the Revolution and was reappointed in 1775. He was also Judge of Probate from 1767 to the Revolution.

Caleb Bunker, appointed June 21, 1751, served until the Revolution. He was reappointed in 1775 and served until 1781.

Ebenezer Calef, was appointed Judge in 1775, and served until 1781.

The Judges of the Inferior Court of Common Pleas for Plymouth County during the Provincial period were William Bradford, appointed December 7, 1692; Nathaniel Thomas, appointed December 7, 1692; John Cushing, appointed December 7, 1692; Ephraim Morton, appointed December 7, 1692; John Wadsworth, appointed October 16, 1696; Isaac Little, appointed October 16, 1696; James Warren, appointed June 7, 1700; John Cushing, Jr., appointed June 7, 1700; Isaac Winslow, appointed June 29, 1702; Joseph Otis, appointed March 18, 1702-3; Seth Arnold, appointed December 9, 1715; Nathaniel Thomas, Jr., appointed December 9, 1715; Isaac Lothrop, appointed November 15, 1721; Josiah Cotton, appointed April 10, 1729; Nicholas Sever, appointed August 25, 1731; Thomas Clap, appointed September 9, 1743; Peter Oliver appointed December 12, 1747; Elijah Cushing, appointed June 21, 1751; Thomas Foster, appointed September 14, 1756; John Winslow, appointed January 28, 1762; Gamaliel Bradford, appointed August 19, 1762; Josiah Edson, appointed March 21, 1771; James Sever, appointed October 26, 1775; William Sever, appointed September 20, 1780; John Turner, appointed September 20, 1780; Benjamin Willis, appointed September 20, 1780; William Watson, appointed September 20, 1780.

The Special Justices appointed at various times were Seth Arnold, appointed October 27, 1713; Josiah Edson, appointed October 27, 1713; Josiah Cotton, appointed January 17, 1727; Edward Winslow, appointed April 10, 1729; Samuel Thaxter, appointed December 12, 1729; Edward Winslow, appointed December 12, 1729; Nicholas Sever, appointed December 12, 1729; Isaac Lothrop, appointed December 15, 1732; Edward Winslow, appointed December 15, 1732; Thomas Croade, appointed October 27, 1740; John Little, ap-

pointed April 8, 1743; Thomas Clap, appointed April 8, 1743; Benjamin Stockbridge, appointed April 8, 1743, Thomas Foster, appointed April 24, 1751; Thomas Croade, appointed January 28, 1762; Josiah Edson, appointed February 17, 1763; David Stockbridge, appointed February 17, 1763; John Cotton, appointed October 26, 1775; Ephraim Spooner, appointed November 17, 1778.

William Bradford, appointed Judge December 7, 1692, was son of Governor William Bradford, and was born in Plymouth June 17, 1624. He was an Assistant in 1658 and 1681, Deputy Governor from 1682 to 1692, except during the short administration of Andros, and Judge of Probate from 1693 to 1702. He commanded the troops of Plymouth Colony during King Philip's War and died in that part of Plymouth which was in 1726 incorporated as Kingston, February 20, 1703-4. He married, first, Alice, daughter of Thomas Richards of Weymouth, second, a widow Wisewall, and third, Mary, daughter of John Atwood and widow of John Holmes.

Nathaniel Thomas, appointed December 7, 1692, has been noticed as Judge of the Superior Court of Judicature.

John Cushing, appointed December 7, 1692, has been noticed as Judge of the Superior Court of Judicature.

Ephraim Morton, appointed December 7, 1692, was son of George and Julia (Carpenter) Morton, and brother of Nathaniel Morton, Secretary of Plymouth Colony and author of New England's Memorial. He was born in Plymouth in 1623.

John Wadsworth, appointed October 16, 1696, was probably son of Christopher and Grace Wadsworth, and was born in Duxbury in 1638. He married in 1667 Abigail Andrews, and died in office May 15, 1700.

Isaac Little, appointed October 16, 1696, was probably son of Thomas and Ann (Warren) Little, and was born in Plymouth in 1646. He died in office December 29, 1699.

James Warren, appointed June 7, 1700, was son of Nathaniel and Sarah (Walker) Warren, and grandson of Richard Warren of the Mayflower. He was Sheriff in 1699, and a Representative. He remained on the bench until June, 1714, and died in May, 1715.

John Cushing, Jr., appointed June 7, 1700, has been noticed as Judge of the Superior Court of Judicature.

Isaac Winslow, appointed June 29, 1702, was son of Governor Josiah and Penelope (Pelham) Winslow, and was born in Mansfield in 1670. He was Judge of Probate from 1718 to 1738, and sat on the Inferior Bench until his resignation in May, 1738. He married Sarah, daughter of John Wensley of Boston, and died in December, 1738.

Joseph Otis, appointed March 18, 1702-3, was son of John and Mary (Jacobs) Otis, and was born in Scituate, in 1665.

Seth Arnold, appointed December 9, 1715, was son of Rev. Samuel Arnold of Duxbury, and in 1700 was Sheriff.

Nathaniel Thomas, Jr., appointed December 9, 1715, was son of Nathaniel and Deborah (Jacobs) Thomas, and was born in Marshfield in 1664. He was Register of Probate from 1702 to 1729. He married, first, in 1694, Mary, daughter of John Appleton of Ipswich, and second, Anna (Tisdale), widow of George Leonard, and died in February, 1739.

Isaac Lothrop, appointed November 15, 1721, was son of Meltiah and Sarah (Farrar) Lothrop, and was born in Barnstable in 1673. He was Sheriff of Plymouth County from 1706 to 1721. He married in 1698

Elizabeth, daughter of Jonathan Barnes of Plymouth, and died in office September 10, 1743.

Josiah Cotton, appointed April 10, 1729, was son of Rev. John and Joanna (Rossiter) Cotton, and was born in Plymouth, January 8, 1679-80. He graduated at Harvard in 1698, was Register of Probate from 1729 to 1756, Clerk of the Courts from 1713 to 1715, County Treasurer and Register of Deeds from 1713 to 1756, and sat on the Inferior Bench until 1747. He married in 1708 Hannah, daughter of John Sturtevant, and died in 1756.

Nicholas Sever, appointed August 25, 1731, was son of Caleb and Sarah (Ingoldsbury) Sever and was born in Roxbury, in 1680. He graduated at Harvard 1701, studied theology and was settled in Dover, N. H., from 1711 to 1715. He finally took up his residence in that part of Plymouth now Kingston, and married in 1728 Sarah, widow of Charles Little, and daughter of James Warren of Plymouth. He died in Kingston, April 7, 1764, having resigned his seat on the bench two years before.

Thomas Clap, appointed September 9, 1743, was born in Scituate, in 1705, and graduated at Harvard in 1725. He was settled in the ministry for a time in Taunton, and died in 1774, having sat on the bench until 1770.

Peter Oliver, appointed December 12, 1747, has been noticed as Judge of the Superior Court of Judicature.

Elijah Cushing, appointed June 21, 1751, was son of John Cushing, 2d, above mentioned, and was born in Scituate. He died in office, June 26, 1762.

Thomas Foster, appointed September 14, 1756, was son of John and Hannah (Stetson) Foster, and was born in Plymouth, in 1705. He served on the bench until the Revolution, and died in 1777. He married Lois, daughter of Jabez Fuller of Barnstable.

John Winslow, appointed January 28, 1762, was son of Isaac and Sarah (Wensley) Winslow and was born in Marshfield, May 27, 1702. Plymouth was long his home and the house built and occupied by him in that town is still standing at the corner of Main and North streets. He was Clerk of the Courts many years, and served on the bench until his death April 17, 1774. In 1740, he commanded an expedition against Cuba, and in July, 1756, was commissioned, by Governor Hardy of New York, General and Commander in Chief of the provincial troops and in 1757, Major General by Governor Pownal. He is well known in history as the commander of the expedition against the Neutral French in Nova Scotia in 1755. He married, first, in 1726, Mary, daughter of Isaac Little, of Plymouth, and second a widow Johnson, whose maiden name was Barker, of Hingham, to which town he finally removed and where he died.

Gamaliel Bradford, appointed August 19, 1762, was son of Samuel and Hannah (Rogers) Bradford, and was born in Duxbury in 1704. He was a Representative and Councillor, and sat on the bench until the Revolution. He married in 1728, Abigail, daughter of Benjamin Bartlett.

Josiah Edson, appointed March 21, 1771, was born in Bridgewater about 1710, and graduated at Harvard in 1730. He sat on the bench until the Revolution, and being a Loyalist, went to New York at the evacuation of Boston, and died in 1778.

James Sever, appointed October 26, 1775, was son of Nicholas and Sarah (Little) (Warren) Sever, and was born in Kingston in 1733.

William Sever, appointed September 20, 1780, was brother of James above mentioned, and was born in Kingston in 1730. He graduated at Harvard in 1745

and was Judge of Probate from 1775 to 1778. He married in 1755, Sarah, daughter of James and Penelope (Winslow) Warren, and died in 1809.

John Turner, appointed September 20, 1780, was of Scituate.

Benjamin Willis, appointed September 20, 1780, was born in Bridgewater about 1720 and graduated at Harvard in 1740. He married in 1742, Bethsheba Williams of Taunton, and second, in 1761, Sarah Bradford of Plymouth, and died in 1807.

William Watson, appointed September 20, 1780, was son of John and Priscilla (Thomas) Watson, and was born in Plymouth in 1730, and graduated at Harvard in 1751. He married in 1756 Elizabeth, daughter of Benjamin Marston of Manchester and died in Plymouth in 1815.

The Judges of the Inferior Court of Common Pleas for Suffolk County during the Provincial period were Elisha Hutchinson, appointed December 7, 1692; John Foster, appointed December 7, 1692; Peter Sergeant, appointed December 7, 1692; Isaac Addington, appointed December 7, 1692; Jeremiah Dummer, appointed July 2, 1702; Penn Townsend, appointed August 14, 1702; Thomas Palmer, appointed June 11, 1711; Edward Lyde, appointed December 9, 1715; Adam Winthrop, appointed December 9, 1715; Edward Hutchinson, appointed December 9, 1723; William Dudley, appointed December 26, 1727; Nathaniel Byfield, appointed December 29, 1731; Elisha Cooke, appointed December 29, 1731; Anthony Stoddard, appointed January 21, 1733; Eliakim Hutchinson, appointed December 31, 1741; Edward Winslow, appointed October 20, 1743; Samuel Watts, appointed April 6, 1748; Thomas Hutchinson, appointed April 3, 1752; Samuel Wells, appointed January 8, 1755; Foster

Hutchinson, appointed April 1, 1758; William Reed, appointed May 9, 1770; Nathaniel Hatch, appointed January 10, 1771; Joseph Green, appointed July 3, 1772; Thomas Hutchinson, Jr., appointed December 31, 1772; Benjamin Gridley, appointed May, 1775; Samuel Dexter, appointed October 31, 1775; John Hill, appointed October 31, 1775; Samuel Niles, appointed October 31, 1775; Samuel Pemberton, appointed October 31, 1775; Thomas Cushing, appointed February 8, 1776.

The following Special Justices of the Inferior Court were appointed at various times :

Samuel Checkley, appointed December 18, 1725; Anthony Stoddard, appointed December 18, 1725; Francis Fulham, appointed February 3, 1731-2; Thomas Greaves, appointed February 3, 1731-2; Hugh Hall, appointed February 3, 1731-2; Josiah Quincy, appointed December 31, 1734; Samuel Danforth, appointed February 21, 1734-5; Francis Foxcroft, appointed February 21, 1734-5; John Quincy, appointed April 6, 1748; James Minot, appointed April 6, 1748; Benjamin Lincoln, appointed January 24, 1770; Joseph Williams, appointed January 24, 1770; Thomas Cushing, appointed October 31, 1775; Joseph Palmer, appointed October 31, 1775; Richard Cranch, appointed 1780; Joseph Gardner, appointed 1780; Edmund Quincy, appointed 1780.

Elisha Hutchinson, appointed Judge December 7, 1692, was son of Edward, and born in Boston in 1640, and was an Assistant from 1684 to 1686. His business was that of a merchant, and he remained on the bench until his death, December 10, 1717.

John Foster, appointed December 7, 1692, was born in England and came to Massachusetts in 1682. He was one of the Council named in the Province Charter and continued a member of that body until his death,

February 9, 1711. He sat on the bench until January, 1710.

Peter Sergeant, appointed December 7, 1692, has been noticed as one of the Judges of the Court of Oyer and Terminer organized to try the witchcraft cases.

Isaac Addington, appointed December 7, 1692, has been already noticed as a Judge of the Superior Court of Judicature.

Jeremiah Dummer, appointed July 2, 1702, was son of Richard, and born in Newbury, Mass., September 14, 1645. He sat on the bench until 1715, and died May 24, 1718.

Penn Townsend, appointed August 14, 1702, was son of William, and born in Boston in 1651. He was a Colonial Representative in 1686 and again Representative from 1689 to 1698, and Speaker of the House from 1694 to 1697. He sat on the bench until 1727 and after 1718 as Chief Justice, and died August 21, 1727.

Thomas Palmer, appointed June 11, 1711, sat on the bench until his death, October 8, 1740, and after 1727 as Chief Justice.

Edward Lyde, appointed December 9, 1715, served until 1723.

Adam Winthrop, appointed December 9, 1715, was fourth in direct descent from Governor John Winthrop, and son of Adam. He graduated at Harvard in 1694, and was a Representative and member of the Council. He sat on the bench until his resignation in 1741, serving as Chief Justice after the death of Thomas Palmer in 1740. He died October 2, 1743.

William Dudley, appointed December 26, 1727, was son of Governor Joseph Dudley, and was born in Roxbury in 1686. He graduated at Harvard in 1704, was a Representative many years and Speaker of the House from 1724 to 1728. He was a member of the Council

from 1729 to 1740. In 1731 he was displaced by Governor Belcher, but reappointed to the bench by him in 1733, remaining until his death, August 10, 1743.

Nathaniel Byfield, appointed December 29, 1731, has been already noticed as Judge of the Admiralty Court.

Elisha Cooke, appointed December 29, 1731, was son of Judge Elisha Cooke, who was Judge of the Superior Court of Judicature from 1692 to 1702, and was born December 20, 1678. He graduated at Harvard in 1697 and studied and practiced medicine. In 1702 he was appointed Clerk of the Superior Court and held that office until 1718. He was a Representative, and when chosen Speaker of the House his election was vetoed by Governor Shute. In 1726 he was chosen a member of the Council from which he had been removed in 1719 by Governor Shute. He was appointed in 1731 Judge of the Inferior Court in the place of William Dudley, above mentioned, but left the bench in 1733 when Judge Dudley was reinstated. He died in 1737.

Anthony Stoddard, appointed January 21, 1733, was son of Simeon and born in 1678. He was a Representative, and a member of the Council from 1735 to 1742. He graduated at Harvard in 1697, and sat on the bench until his death, March 11, 1748.

Edward Hutchinson, appointed in 1723, was son of Judge Elisha Hutchinson, and born in 1678. He was a Representative from Boston in 1717 and 1718. In 1731 he was displaced from the bench by Governor Belcher, with William Dudley, to give place to Elisha Cooke and Nathaniel Byfield, but was reappointed in 1740. In 1741, on the resignation of Adam Winthrop, he was made Chief Justice and served until his death, March 16, 1752. He was also Judge of Probate.

Eliakim Hutchinson, appointed December 31, 1741, graduated at Harvard in 1730, and was a member of

the Council from 1744 to 1746. He succeeded Edward Hutchinson as Chief Justice in 1752 and remained until the Revolution.

Edward Winslow, appointed October 20, 1743, son of Edward and Elizabeth (Hutchinson) Winslow, and grandson of John, who came to Plymouth in the *Fortune* in 1621 and married Mary Chilton, one of the *Mayflower's* passengers, was born in Boston in 1669. He was Sheriff from December 12, 1728, to October 20, 1743, when he was appointed Judge, and continued on the bench until his death in December, 1753. At the time of his death he was Treasurer of Suffolk County.

Samuel Watts, appointed April 6, 1748, was a member of the Council from 1742 to 1763. He continued on the bench until his death, March 12, 1770.

Thomas Hutchinson, appointed April 3, 1752, has been already noticed as Judge of the Superior Court of Judicature.

Samuel Wells, appointed January 8, 1755, graduated at Harvard in 1744. He was a Representative, and a member of the Council in 1747 and 1748. He remained on the bench until his death, May 20, 1770.

Foster Hutchinson, appointed April 1, 1758, was a brother of Governor Thomas Hutchinson, and son of Thomas, of Boston. He was born in Boston about 1702 and graduated at Harvard in 1721. He has been already noticed as Judge of the Superior Court of Judicature.

William Reed, appointed May 9, 1770, has already been noticed as Judge of the Court of Admiralty.

Nathaniel Hatch, appointed January 10, 1771, was born in Dorchester, Mass., and graduated at Harvard in 1742. As a Loyalist he left the country at the Revolution and died in 1780.

Joseph Green, appointed July 3, 1772, left the bench

December 31 in the same year. He was a Loyalist and left the country at the Revolution.

Thomas Hutchinson, Jr., appointed December 31, 1772, was son of Governor Thomas Hutchinson, and graduated at Harvard in 1758. Being a Loyalist he left the country at the Revolution, and died in England in 1811.

Benjamin Gridley, appointed May, 1775, was a Barrister, and graduated at Cambridge in 1751. His was the last appointment made by a Royal Governor. He went to Halifax in 1776, and in 1778 was proscribed. He probably died in England.

Samuel Dexter, appointed October 31, 1775, was son of Rev. Samuel Dexter of Dedham, Mass., and was born in that town in 1726. Engaging in mercantile pursuits, he was a Representative and member of the Council. During the Revolution he was one of the Supreme Executive Council of the State, and his appointment as Judge was made by the Council in the name of "the Government and People of Massachusetts Bay in New England." He gave by his will \$5,000 to Harvard College for the encouragement of Biblical criticism, and died in Mendon, Mass., in 1810.

John Hill, appointed October 31, 1775, whose appointment was similar to that of Judge Dexter above mentioned, probably remained on the bench until the organization of the new Court of Common Pleas, July 3, 1782.

Samuel Niles, appointed October 31, 1775, graduated at Harvard in 1731. His appointment was similar to the appointments of Judges Dexter and Hill. He died in 1804.

Samuel Pemberton, also appointed by the Council, October 31, 1775, graduated at Harvard in 1742. He died in 1779.

Worcester County was incorporated April 2, 1731. In the act of incorporation it was provided that a Court of General Sessions of the Peace and an Inferior Court should be held at Worcester on the second Tuesdays of May and August and the first Tuesdays of November and February in each year, and a session of the Superior Court of Judicature on the Wednesday immediately preceding the session at Springfield, then in the County of Hampshire. It further provided that the Court of General Sessions of the Peace should appoint a Register of Deeds, who should hold office until the election on the first Thursday of the next September. The first Court of Probate was held July 13, 1731, the first session of the Court of General Sessions of the Peace and of the Inferior Court on the 10th of August, and of the Superior Court on the 22d of September. The Judges of the Superior Court present at its first session were Chief Justice Benjamin Lynde and Associate Justices Paul Dudley and Edmund Quincy. On the occasion of the first session of the Inferior Court, Rev. John Prentice of Lancaster preached a sermon from the text, 2 Chronicles, chapter 19, verses 6 and 7: "And said to the Judges take heed what you do; for ye judge not for man but for the Lord, who is with you in judgment; wherefore now let the fear of the Lord be upon you; take heed and do it, for there is no iniquity with the Lord our God, nor respect of persons, nor taking of gifts."

The early sessions of the courts were held in the meetinghouse in Worcester but a court house was erected in 1733, on land given by Judge Jennison near the site of the present brick court house. It was opened February 8, 1734, and occupied until 1751 when a new court house was built on Court Hill at the corner of Green and Franklin streets. The corner stone of the brick

building now standing was laid October 1, 1801 and the building was opened September 27, 1803, on which occasion Judge Robert Treat Paine, of the Supreme Judicial Court, delivered an address. In February, 1842, the County Commissioners decided to build another court house and the granite building now chiefly used for county purposes was erected at a cost of \$100,000, on the site of the house of Isaiah Thomas, which was removed to the rear and is thought by the writer to be still standing. It was opened September 30, 1845, on which occasion Chief Justice Lemuel Shaw of the Supreme Judicial Court delivered an address.

On the 6th of June, 1856, an Act was passed providing for the holding of three terms of the Common Pleas Court in Fitchburg and in 1871, a court house was erected in that town at a cost of about \$125,000. On the 29th of February, 1884, Worcester County was divided into two districts for the registration of deeds; one including Ashburnham, Fitchburg, Leominster, Lunenburg and Westminster to be called the Northern District, and the other including the remainder of the county to be called the Southern District.

The Judges of the Inferior Court of Common Pleas for Worcester County during the Provincial period were John Chandler, appointed June 30, 1731; Joseph Wilder, appointed June 30, 1731; William Ward, appointed June 30, 1731; William Jennison, appointed June 30, 1731; Joseph Dwight, appointed October 5, 1739; Samuel Willard, appointed January 27, 1742-3; Nahum Ward, appointed December 21, 1744; Edward Hartwell, appointed January 2, 1753; John Chandler, appointed April 19, 1754; Thomas Steele, appointed June 26, 1755; Timothy Ruggles, appointed April 19, 1757; Joseph Wilder, appointed January 21, 1762; Artemas Ward, appointed January 21, 1762; Artemas Ward,

appointed October 17, 1775 ; Jedediah Foster, appointed October 17, 1775 ; Moses Gill, appointed October 17, 1775 ; Samuel Baker, appointed October 17, 1775 ; Joseph Dorr, appointed September 19, 1776 ; Artemas Ward, appointed March 1, 1881 ; Moses Gill, appointed March 1, 1881 ; Samuel Baker, appointed March 1, 1881 ; Joseph Dorr, appointed March 1, 1881.

The Special Justices of the Inferior Court appointed at various times were Joseph Dwight, appointed February 21, 1733-4 ; Nahum Ward, appointed February 21, 1733-4 ; Nahum Ward, appointed June 23, 1743 ; Edward Hartwell, appointed June 23, 1743 ; Edward Hartwell, appointed April 5, 1745 ; Jonas Rice, appointed April 26, 1745 ; Jonas Rice, appointed March 29, 1749-50 ; Jonas Rice, appointed January 2, 1753 ; Thomas Steele, appointed January 16, 1754 ; Joseph Wilder, Jr., appointed January 16, 1754 ; Samuel Willard, appointed June 26, 1755 ; Artemas Ward, appointed June 26, 1755 ; John Murray, appointed January 21, 1762 ; Joseph Wheeler, appointed October 17, 1775 ; Jonathan Ward, appointed September 24, 1778.

Judge Washburn in his Judicial History says that Jonas Rice was a standing Judge of the Inferior Court at the time of his death, September 22, 1753. The writer omits him from the above list, finding no authority in the records for the inclusion of his name. He was appointed Special Justice in 1745-1749-50 and January 2, 1753, the last year being that of his death. It is probable that the last appointment led to the error.

John Chandler, who was appointed Judge June 30, 1731, belonged in Woodstock, then in Massachusetts but now in Connecticut. He was also Judge of Probate from 1730 to 1740, and when appointed to the Inferior Court was made Chief Justice. He sat on the bench until his death in 1743.

Joseph Wilder, appointed June 30, 1731, was of Lancaster and in 1743 succeeded John Chandler as Chief Justice. He succeeded him also as Judge of Probate in 1740, and held both offices until his death, March 29, 1757.

William Ward, appointed June 30, 1731, was of Southboro.

William Jennison, appointed June 30, 1731, was of Worcester and graduated at Harvard in 1724. He sat on the bench until his death, September 19, 1741.

Joseph Dwight, appointed October 5, 1739, has been already noticed as Judge of the Inferior Court of Common Pleas in Hampshire County.

Samuel Willard, appointed January 27, 1742-3, was of Lancaster, and remained on the bench until 1753.

Nahum Ward, appointed December 21, 1744, was perhaps of Shrewsbury, Mass. He was father of Artemas Ward hereafter mentioned as Judge of the Inferior Court, and grandfather of Artemas Ward, Chief Justice of the Court of Common Pleas for the Commonwealth at the time of its establishment in 1820. He remained on the bench until 1762.

Edward Hartwell, appointed January 2, 1753, was born in Lunenburg, Mass., in 1689, and died February 17, 1785.

John Chandler, appointed April 19, 1754, was son of Judge John Chandler above noticed, and was born in Woodstock, then in Massachusetts but now in Connecticut, October 10, 1693. He removed to Worcester in 1731, and was Clerk of the Courts and Register of Probate from that time until 1754 and Register of Deeds until 1762. He was also Sheriff of Worcester County from 1751 to 1762, and succeeded Judge Wilder as Judge of Probate in 1757. He died at Worcester in 1763.

Thomas Steele, appointed June 26, 1755, was born in Boston and graduated at Harvard in 1730. He settled in Lancaster as a merchant and served on the bench until the Revolution. He was a Loyalist but died in 1776.

Timothy Ruggles, appointed April 19, 1757, was born in Rochester, Mass., October 11, 1711, and graduated at Harvard in 1732. He practiced law in Rochester and Sandwich and in 1755 removed to Hardwick, Mass. He was appointed Chief Justice in 1762 and in 1762 and 1763 was Speaker of the House of Representatives. He was an earnest Loyalist and in 1774 accepted the position of Mandamus Councillor. At the Revolution he abandoned his estates in Hardwick and went to Boston and then joined the Royal Army on Long Island. He finally removed to Halifax, Nova Scotia, where he died in 1798. He was a man of versatile talents being at one time a hotel keeper in Sandwich as well as lawyer and later in life a distinguished military officer. In the expedition against Crown Point in 1755 he held the rank of Colonel, and in the battle at Lake George the same year he was second in command. In 1765 he was one of the three delegates of Massachusetts to a Provincial Convention held in New York and was chosen President of that body.

Joseph Wilder, appointed January 21, 1762, son of Judge Joseph Wilder above noticed, was born in Lancaster, Mass., and sat on the bench until his death in 1773.

Artemas Ward, appointed January 21, 1762, was son of Judge Nahum Ward above noticed, and was born in Shrewsbury, Mass., November 27, 1727. He graduated at Harvard in 1748 and engaged in business pursuits. He was a Representative and in 1774 was a member of the Council. He served under Abercrombie against

Ticonderoga and later was Colonel in the Militia. He was a member of the first Provincial Congress and the first of three general officers to whom the command of volunteers was given. He commanded the troops about Boston until the arrival of Washington, but soon after on account of ill health retired from the service. On the 17th of October, 1775, he was appointed by the Council Chief Justice of the Inferior Court for Worcester County, and reappointed March 1, 1781, and again in 1782, on the organization of the new Court of Common Pleas. In 1778 he was a member of the Executive Council and in 1790 was chosen member of Congress. In 1786, while Chief Justice, he distinguished himself in resisting the insurgents in Shays' Rebellion in their attempt to prevent the session of his court in Worcester. He remained on the bench until his resignation in 1795, and died October 28, 1800.

Jedediah Foster, appointed October 17, 1775, received his appointment from the Council. He has been already noticed as Judge of the Superior Court of Judicature.

Moses Gill, appointed by the Council October 17, 1775, was born in Charlestown, Mass., in 1733, and engaged in mercantile pursuits until about 1767 when he removed to Princeton, Mass., and became Representative, Senator and Councillor. He was Lieutenant Governor from 1794 until his death, May 20, 1800. Governor Increase Sumner having died June 7, 1799, Mr. Gill became Acting Governor, and at his death in the May following the Commonwealth was left without an executive. The Council of which Thomas Dawes was President officiated until May 30, when Caleb Strong was inaugurated Governor. He was recommissioned as Judge March 1, 1781, and appointed Judge of the

new Court of Common Pleas which was established July 3, 1782.

Joseph Dorr, appointed September 19, 1776, was son of Rev. Joseph Dorr, of Mendon, and graduated at Harvard in 1752. He was recommissioned March 1, 1781, and was appointed in 1782 Judge of the new Court of Common Pleas which was established July 3 in that year. He left the bench in 1801 and removing to Brookfield died in 1808. He was also Judge of Probate for Worcester County from 1783 to 1801.

Samuel Baker, appointed October 17, 1775, was of Berlin, Mass., and was a Representative and State Senator. He was recommissioned March 1, 1781, and appointed in 1782 Judge of the newly organized Court of Common Pleas. He sat on the bench until his death in 1795.

The narrative of the Provincial period will close with a record of the remaining judicial and court officers arranged in the counties where they served.

The administration of probate affairs as has been already stated was in the hands of the County Court during the colonial period up to the accession of President Dudley in 1686. Dudley assumed the administration, but delegated it in one or more counties to officers of his own appointment. Under the administration of Andros the Governor attended personally to the settlement of estates exceeding fifty pounds. After the deposition of Andros in 1688 the old method was resumed and continued until the charter of the Province went into operation in 1692. During the Provincial period there was no Probate Court established by law, but the Judges and Registers exercised their powers under authority derived from the Governor and Council. The following were the Judges and Registers of Probate in the several counties :

BARNSTABLE COUNTY JUDGES OF PROBATE.

Barnabas Lothrop, appointed 1702; John Otis, appointed 1714, 1715; Meletiah Bourne, appointed 1727, 1729, 1731; Sylvanus Bourne, appointed 1740-1, 1746, 1762; James Otis, appointed 1764, 1775; Daniel Davis, appointed 1778, 1780.

REGISTERS OF PROBATE.

William Bassett, appointed 1702, 1715; Nathaniel Otis, appointed 1721; Sylvanus Bourne, appointed 1729, 1731; David Gorham, appointed 1740-1, 1762, 1768; Nathaniel Freeman, appointed 1775, 1780.

BERKSHIRE COUNTY JUDGES OF PROBATE.

Joseph Dwight, of Great Barrington, appointed 1761; William Williams, of Pittsfield, appointed 1765; Mark Hopkins, appointed September 28, 1775; Timothy Edwards, of Stockbridge, appointed March 6, 1777; Timothy Edwards, of Stockbridge, appointed February 16, 1781.

REGISTERS OF PROBATE.

Elijah Dwight, appointed 1761; Erastus Sergeant, appointed November 2, 1775; Jahleel Woodbridge, appointed October 9, 1778; William Walker, appointed February 16, 1781.

BRISTOL COUNTY JUDGES OF PROBATE.

Nathaniel Byfield, appointed October 23, 1702; Nathaniel Paine, appointed August 24, 1710; Nathaniel Byfield, appointed December 9, 1715; Nathaniel Blagrove, appointed September 27, 1729; Nathaniel Hubbard, appointed April 5, 1744; George Leonard, appointed February 16, 1747-8; George Leonard, 2d, appointed November 24, 1761; George Leonard, ap-

pointed 1775, 1776; Benjamin Williams, appointed 1778, 1780.

REGISTERS OF PROBATE.

John Carey, appointed 1702; Ebenezer Brenton, appointed 1715; Stephen Paine, appointed 1721; George Leonard, Jr., appointed 1749, 1775, 1776, 1780.

DUKES COUNTY JUDGES OF PROBATE.

Matthew Mayhew, appointed October 16, 1696; Benjamin Skiffe, appointed June 22, 1710; Paine Mayhew, appointed April 16, 1718; Zacheus Mayhew, appointed May 4, 1733; Matthew Mayhew, 2d, appointed May 23, 1761; James Athearne, appointed 1775, 1780.

REGISTERS OF PROBATE.

Matthew Mayhew, Jr., appointed October 16, 1696; Jabez Athearne, appointed April 16, 1718; Benjamin Smith, appointed 1775, 1780; Thomas Cook, appointed 1781.

ESSEX COUNTY JUDGES OF PROBATE.

Bartholomew Gedney, appointed 1692; Jonathan Corwin, appointed 1698; John Appleton, appointed 1702; Thomas Berry, appointed 1739; John Choate, appointed 1756; Nathaniel Ropes, appointed 1766; Benjamin Lynde, appointed 1772; Benjamin Greenleaf, appointed 1781.

REGISTERS OF PROBATE.

Stephen Sewall, appointed 1692; John Croade, appointed 1695; John Higginson, appointed 1698; Daniel Rogers, appointed 1702; Daniel Appleton, appointed 1723; Samuel Rogers, appointed 1762; Peter Frye, appointed 1773; Daniel Noyes, appointed 1781.

HAMPSHIRE COUNTY JUDGES OF PROBATE.

John Pynchon, appointed June 18, 1692 ; August 13, 1702 ; Samuel Partridge, appointed March 18, 1702-3 ; December 10, 1715 ; John Stoddard, appointed July 10, 1727 ; December 28, 1732 ; Timothy Dwight, appointed September 27, 1748 ; September 6, 1753 ; June 22, 1758 ; June 24, 1761 ; Israel Williams, appointed June 8, 1764 ; Samuel Mather, appointed August 28, 1775 ; Eleazer Porter, appointed September 20, 1781.

REGISTERS OF PROBATE.

Samuel Partridge, appointed June 18, 1692 ; August 13, 1702 ; John Pynchon, Jr., appointed March 18, 1703 ; December 10, 1715 ; Timothy Dwight, appointed July 10, 1729 ; December 28, 1732 ; Timothy Dwight, Jr., appointed September 27, 1748 ; September 6, 1753 ; June 22, 1758 ; June 24, 1761 ; Solomon Stoddard, appointed June 8, 1764 ; Israel Williams, appointed October 26, 1768 ; Caleb Strong, appointed August 28, 1775 ; John Chester Williams, appointed September 20, 1781.

MIDDLESEX COUNTY JUDGES OF PROBATE.

James Russell, appointed June 18, 1692 ; John Leverett, appointed October 23, 1702 ; Francis Foxcroft, appointed July 8, 1708 ; Jonathan Remington, appointed September 30, 1725 ; Samuel Danforth, appointed December 20, 1745 ; John Winthrop, appointed September 6, 1775 ; Oliver Prescott, appointed March 27, 1780.

REGISTERS OF PROBATE.

Samuel Phipps, appointed June 18, 1692 ; Thomas Swan, appointed October 23, 1702 ; Nicholas Fessenden, appointed September 15, 1705 ; Daniel Foxcroft, appointed December 28, 1709 ; Thomas Foxcroft, appointed December 9, 1715 ; Francis Foxcroft, appointed

July 2, 1729; Samuel Danforth, appointed July 9, 1731; Andrew Boardman, appointed December 20, 1745; Andrew Boardman, Jr., appointed 1769; William Kneeland, appointed May 29, 1769; James Winthrop, appointed September 6, 1775; March 27, 1780.

NANTUCKET JUDGES OF PROBATE.

John Gardner, appointed 1695; James Coffin, appointed June 6, 1706; George Bunker, appointed June 28, 1728; George Gardner, appointed July 6, 1732; Jeremiah Gardner, appointed September 11, 1747; Grafton Gardner, appointed March 25, 1767; Grafton Gardner, appointed 1775.

REGISTERS OF PROBATE.

George Gardner, appointed December 13, 1715; Eleazer Folger, appointed July 6, 1732; Frederick Folger, appointed January 16, 1754; Frederick Folger, appointed 1775.

PLYMOUTH COUNTY JUDGES OF PROBATE.

✓ L William Bradford, appointed 1693; Nathaniel Thomas, appointed 1702; Isaac Winslow, appointed 1718; John Cushing, appointed 1739; Edward Winslow, 1740; John Cushing, appointed 1746; William Sever, appointed 1775; Joseph Cushing, appointed 1778.

REGISTERS OF PROBATE.

Samuel Sprague, appointed 1693; William Bassett, appointed 1700; Nathaniel Thomas, appointed 1702; Josiah Cotton, appointed 1729; John Winslow, appointed 1738; Edward Winslow, appointed 1756; Isaac Lothrop, appointed 1776.

SUFFOLK COUNTY JUDGES OF PROBATE.

William Stoughton, appointed June 18, 1692; Elisha

Cooke, appointed August 8, 1701; Isaac Addington, appointed November 19, 1702; Samuel Sewall, appointed December 9, 1715; Joseph Willard, appointed December 19, 1728; November 5, 1741; Edward Hutchinson, appointed February 12, 1745-6; Thomas Hutchinson, appointed April 3, 1752; November 5, 1761; Foster Hutchinson, appointed August 3, 1769; Thomas Cushing, appointed 1775; Oliver Wendell, appointed November 16, 1780.

REGISTERS OF PROBATE.

Isaac Addington, appointed June 18, 1692; Paul Dudley, appointed November 19, 1702; Joseph Marion, appointed December 19, 1715; John Boydell, appointed October 19, 1722; Benjamin Rolfe, appointed October 19, 1722; John Boydell, appointed December 15, 1732; Andrew Belcher, appointed December 21, 1739; November 5, 1741; John Payne, appointed July 14, 1749; John Shirley, appointed January 25, 1754; John Payne, appointed September 20, 1754; March 28, 1755; John Cotton, appointed March 28, 1755; William Cooper, appointed 1759; John Cotton, appointed 1759; William Cooper, appointed 1761; John Cotton, appointed 1761; William Cooper, appointed October 30, 1776.

WORCESTER COUNTY JUDGES OF PROBATE.

Joel Chandler, appointed 1731; Joseph Wilder, appointed 1740; Joseph Chandler, appointed 1756; John Chandler, Jr., appointed 1762; Jedediah Foster, appointed 1775; Artemas Ward, appointed 1776; Levi Lincoln, appointed 1778; Artemas Ward, appointed June 19, 1781.

REGISTERS OF PROBATE.

John Chandler, Jr., appointed 1731; Timothy Paine, Clarke Chandler, Joseph Wheeler, appointed 1775.

CHAPTER IV.

COMMONWEALTH OF MASSACHUSETTS.

The last chapter which professedly brought this narrative down to the close of the Provincial period was of necessity extended a little beyond that portion of Massachusetts history. Indeed it is a little difficult to define the exact line between the Province and the Commonwealth. This is especially true of the history of the judicial system for there was a transition period during which the courts were maintained without change of name by neither royal nor state authority, but by an extemporized government which issued its commissions as the Council "in the name of the Government and People of Massachusetts Bay in New England."

The last session of the Superior Court of Judicature under the charter was held in September, 1774, though Judges were appointed by royal authority until September, 1775, and the first session under the Revolutionary régime was held in Essex County in June, 1776. Commissions began to be issued by the Council in the autumn of 1775, and provisional arrangements were at once made by the General Court for various court sessions. In February, 1776, owing to the occupation of Boston by the British an act passed in February, 1776, provided that Dedham should be the shire of Suffolk County and that the courts for that county should be held in Dedham and Braintree. The first Suffolk County Court under that act was held in Braintree in

September, 1776, and the first court in Boston after the evacuation was held in February, 1777.

In 1777 the Council and House of Representatives met in convention and adopted a form of constitution "for the State of Massachusetts Bay" which was submitted to the people and rejected. On the 20th of February, 1779, the General Court passed a Resolve calling on the qualified voters to give in their votes on the question; whether they chose to have a new constitution made and whether they would empower their Representatives to vote for calling a state convention for that purpose. Both of these questions were answered in the affirmative and a constitutional convention was held in Cambridge on the first of September, 1779, in accordance with a Resolve of the General Court passed on the seventeenth of June in that year. This convention, of which James Bowdoin was President and Samuel Bassett, Secretary, adjourned on the eleventh of November to meet in Boston on the fifth of January, 1780. On the second of March a resolution was passed to submit a constitution which had been framed to the people and the convention adjourned to meet in the Brattle Square Church in Boston on the seventh of June. At the adjourned meeting the votes were counted and on the fifteenth of June the convention resolved "That the people of the State of Massachusetts Bay have accepted the constitution as it stands in the printed form submitted to their revision."

The following extracts from the constitution contain all its provisions concerning the Judiciary :

"Part 1st, Article 12. No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally described to him; or be compelled to accuse or furnish evidence against himself. And every subject shall have a right to produce all proofs

that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself or his counsel at his election, And no subject shall be arrested, imprisoned, despoiled or deprived of his property, immunities or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty or estate but by the judgment of his peers, or the law of the land.

“Part 1st, Article 14. Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions. All warrants therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation, and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest or seizure; and no warrant ought to be issued but in cases and with the formalities prescribed by the laws.

“Part 1st, Article 15. In all controversies concerning property and in all suits between two or more persons, except in cases in which it has heretofore been otherwise used and practised, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners’ wages, the legislature shall hereafter find it necessary to alter it.

“Part 1st, Article 26. No magistrate, or court of law shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

“Part 1st, Article 29. It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the

people, and of every citizen, that the Judges of the Supreme Judicial Court should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws.

“Part 2d, Chap. 1, Sec. 1, Article 3. The General Court shall forever have full power and authority to erect and constitute Judicatories and Courts of Record, or other Courts, to be held in the name of the Commonwealth, for the hearing, trying and determining of all manner of crimes, offences, pleas, processes, complaints, actions, matters, causes and things whatsoever, arising or happening within the Commonwealth or between or concerning persons inhabiting or residing or brought within the same; whether the same be criminal or civil, or whether the said crimes be capital or not capital, and whether the said pleas be real, personal or mixed; and for the awarding and making out of execution thereupon. To which Courts and Judicatories are hereby given and granted full power and authority from time to time to administer oaths or affirmations, for the better discovering of truth in any matter in controversy or depending before them.

“Part 2d, Chap. 3, Article 1. The tenure, that all commission officers shall by law have in their offices shall be expressed in their respective commissions. All judicial officers duly appointed, commissioned and sworn shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this constitution; provided nevertheless the Governor with consent of the Council may remove them upon the address of both houses of the Legislature.

“Part 2d, Chap. 3, Article 2. Each branch of the legislature, as well as the Governor and Council, shall have authority to require the opinions of the Justices of the Supreme Judicial Court upon important questions of law, and upon solemn occasions.

“Part 2d, Chap. 3, Article 4. The Judges of Probate of wills and for granting letters of administration shall hold

their courts at such place or places on fixed days as the convenience of the people shall require; and the Legislature shall, from time to time, hereafter appoint such times and places; until which appointments the said courts shall be holden at the times and places which the respective Judges shall direct.

“Part 2d, Chap. 6, Article 2. No Governor, Lieutenant Governor, or Judge of the Supreme Judicial Court shall hold any other office or place under the authority of this Commonwealth except such as by this constitution they are admitted to hold, saving that the Judges of the said Court may hold the offices of Justices of the Peace through the state; nor shall they hold any other place or office, or receive any pension or salary from any other state or government or power whatever. . . . No person holding the office of Judge of the Supreme Judicial Court, Judge of Probate, Register of Probate, . . . shall at the same time have a seat in the Senate or House of Representatives. . . . (See 8th Amendment.)

“Part 2d, Chap. 6, Article 5. All writs issuing out of the clerk's office in any of the courts of law, shall be in the name of the Commonwealth of Massachusetts; they shall be under the seal of the court from whence they issue; they shall bear test of the first Justice of the Court to which they shall be returnable, who is not a party, and be signed by the Clerk of such Court.

“Part 2d, Chap. 6, Article 9. To the end that there may be no failure of justice or danger arise to the Commonwealth from a change of the form of Government, all officers, civil and military, holding commissions under the Government and people of Massachusetts Bay in New England, and all other officers of the said Government and people at the time this constitution shall take effect, shall have, hold, use, exercise and enjoy all the powers and authority to them granted or committed until other persons shall be appointed in their stead; and all courts of law shall proceed in the execution of the business of their respective departments; and all the executive and legislative officers, bodies and powers shall

continue in full force, in the enjoyment and exercise of all their trusts, employments and authority, until the General Court and the supreme and executive officers under this constitution are designated and invested with their respective trusts, powers and authority.”

It will be observed that though no action had been taken by the General Court to establish any particular court, the Constitution names in three places the Supreme Judicial Court as if such a court were then in operation. The court then in existence was really the Superior Court of Judicature which in the Constitution was made to assume the new name of Supreme Judicial Court before such a Court was really established by law. The new name having thus been assumed was thereafter recognized by the General Court and the people. On the 21st of February, 1781, an act was passed entitled “An act empowering the Supreme Judicial Court to take cognizance of matters heretofore cognizable by the late Superior Court, which provided as follows:—

“Whereas by the laws heretofore made by the General Assembly of the late province, colony and state of Massachusetts Bay, a Superior Court of Judicature, Court of Assize and General Gaol Delivery was constituted and sundry powers and authorities are given to the same Court by particular laws; And whereas by the Constitution and frame of government of the Commonwealth of Massachusetts the style and title of the same Court is now the Supreme Judicial Court of the Commonwealth of Massachusetts.

“And the Constitution aforesaid having provided that the laws heretofore made and adopted should continue and be in force until they shall be altered or repealed by the Legislature: whence some doubts may arise whether the Supreme Judicial Court shall have cognizance of those matters which by particular laws were expressly made cognizable by the Superior Court of Judicature, Court of Assize and General Gaol Delivery.

“Sec. 1. Be it therefore enacted by the Senate and House of Representatives in General Court assembled and by the authority of the same, that the court which hath been, or shall be hereafter appointed and commissioned according to the Constitution as the Supreme Judicial Court of the Commonwealth, shall have cognizance of all such matters, as have heretofore happened, or that shall hereafter happen, as by particular laws were made cognizable by the late Superior Court of Judicature, Court of Assize and General Gaol Delivery, unless, where the Constitution and frame of government hath provided otherwise.”

On the 3d of July, 1782, an Act was passed entitled “An Act establishing a Supreme Judicial Court within the Commonwealth” and as this act is the foundation on which that Court rests it will be quoted in full and is as follows:

“Sec. 1. Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, that there shall be a Supreme Judicial Court within this Commonwealth, to be held and kept at the several times and places by law appointed, by one Chief Justice and four other Justices, each of whom shall be an inhabitant of this Commonwealth, of sobriety of manners and learned in the law, to be appointed and commissioned as is by the Constitution provided; and they or any three of them shall be a Court and have cognizance of pleas real, personal and mixed; and of all civil actions between party and party, and between the Commonwealth and any of the subjects thereof, whether the same do concern the realty, and relate to right of freehold, inheritance or possession; whether the same do concern the personalty and relate to any matter of debt, contract, damage or personal injury; and also all mixed actions which do concern the realty and personalty brought legally before the same Supreme Judicial Court by appeal, review, writ of error or otherwise; and in

all such actions real, personal and mixed, to give such judgment and award such execution, as the common rules of justice and laws of this Commonwealth shall direct; and shall take cognizance of all capital and other offences and misdemeanors whatsoever, of a public nature tending either to a breach of the peace, or the oppression of the subject, or raising of faction, controversy or debate, to any manner of misgovernment; and of every crime whatsoever that is against the public good; and shall by virtue of their office be severally conservators of the peace throughout the Commonwealth. And upon all persons duly and legally convicted before the said court of crimes, offences or misdemeanors, to inflict such punishment as by the laws of the Commonwealth is provided. And in case of legal conviction, where no punishment by statute law is provided, then the said Court shall punish the person so convicted, and according to the common usage and practice within this Commonwealth not repugnant to the Constitution, according to the nature of the offence.

“Sec. 2. And be it further enacted that the same Supreme Judicial Court may by certiorari or other legal methods, cause to be brought before them as well indictments or other criminal prosecutions pending in, as the records of sentences, orders, decrees and judgments of any court of inferior criminal jurisdiction, and to proceed, order and award thereon, as shall be by law provided and directed. And the said Supreme Judicial Court is empowered to impose and administer all oaths, as well those that are necessary for promoting justice between party and party as those necessary to the conviction and punishment of offenders; and to punish at the reasonable discretion of the Court all contempts committed against the authority of the same; and the said Court shall have power to issue all writs of prohibition and mandamus, according to the law of the land, to all courts of inferior judiciary powers, and all processes necessary to the furtherance of justice and the regular execution of the laws.

“Sec. 3. And it is further enacted that all writs and

processes of the same Court shall be in the name of the Commonwealth of Massachusetts, bear test of the first justice who is not a party to the suit, and shall be under the seal of the same Court and signed by the Clerk.

“Sec. 4. And it is further enacted, That the same Supreme Judicial Court shall and may from time to time, make record and establish all such rules and regulations with respect to the admission of Attorneys ordinarily practicing in the said court, and the creating of Barristers at Law, and all other rules respecting modes of trial and the conduct of business, as the discretion of the same court shall dictate. Provided always, That such rules and regulations be not repugnant to the laws of the Commonwealth.

“Sec. 5. And it is further enacted, That the Justices of the said Supreme Judicial Court, or any three of them, shall be empowered to adjourn the same court from time to time, as may be necessary to the public good. And when it shall so happen, that any of the Justices of the said court shall providentially be detained from attending at the time when the same court by law or by any previous adjournment is to be held, by means whereof there cannot be a competent court, any two Justices of the same court may by writ under their hands and seals, adjourn the same court to such further day as shall be expressed in the same writ; and the sheriff of the county or his deputy shall read such writ audibly in the court house, or place where the court was to be holden, and post up an attested copy thereof in some public and conspicuous place there, and shall cause publication to be made of the same in some other of the most public places in the county, and the Justices of the Supreme Judicial Court shall from time to time appoint a clerk or clerks to attend said court and record the proceedings thereof, and to do all other things which shall be by law their duty to do; Which clerk or clerks shall be duly sworn to the faithful performance of their office, and shall hold the same during the pleasure of said court.

A subsequent act passed March 12, 1784, gave to the Supreme Court appellate jurisdiction in all matter determined by Judges of Probate in their respective counties, and an act passed March 16, 1786, conferred upon it jurisdiction in all questions of divorce and alimony. Up to March 11, 1797, the Clerk of the Supreme Judicial Court had his office in Boston, but on that date an act was passed providing that the Clerk of the Common Pleas Court in each county should be also Clerk of the Supreme Judicial Court, with the exception of the Clerk in each of the following counties: Lincoln, Hancock, Washington, Dukes County and Nantucket, and that the Clerk of the Supreme Court in Boston should be Clerk for Nantucket, and the Clerk of Barnstable County should be also Clerk for Dukes County.

On the 27th of February, 1790, the salary of the Chief Justice was fixed at £370, and that of the Associates at £350, without any fee or perquisite. In 1806 the salaries were fixed at \$2,500 for the Chief Justice and \$2,400 for the Associates, and in 1809, \$3,500 for the Chief and \$3,000 for the Associates. In 1843 the salaries were reduced to \$3,000 and \$2,500, and in 1844 the old salaries were restored with additions retroacting to the date of the reduction. In 1856 the salaries were fixed at \$4,500 and \$4,000, in 1872 to \$6,500 and \$6,000, in 1888 the same, with the addition of \$500 for travelling expenses, in 1892 at \$7,500 and \$6,500 with \$500 for travelling expenses, and in 1900 at \$8,500 and \$8,000 with \$500 for travelling expenses. In 1899 a law was passed as a substitute for laws passed in 1885 and 1887, providing that a Judge serving in either or both the Supreme Judicial and Superior Courts at least ten consecutive years, and shall resign after he reaches the age of seventy years, shall be entitled to receive three quarters of the annual salary during his life, and that he may

resign with the approval of the Governor and Council at the age of sixty years after fifteen years' consecutive service in either or both courts, and be entitled to receive during his life three quarters of the salary.

The number of Associate Justices was increased to six in 1800. In 1805 the number of Associates was reduced to four, and in 1852 one more was added. In 1873 the number was increased to six and has so remained up to the present time.

The jurisdiction of the Supreme Judicial Court has been repeatedly changed, the most recent changes having been the transfer in 1887 of jurisdiction in matters of divorce and alimony to the Superior Court, the transfer in 1891 to the same court of capital trials and in the same year giving to that court concurrent jurisdiction in matters relating to telegraph and telephone wires, in matters relating to the abuse by towns of corporate powers, relating to the construction, alteration, maintenance and use of buildings, and relating to the control of street railways.

The following is a list of appointments to the bench of the Supreme Judicial Court since its establishment on the 3d of July, 1782.

CHIEF JUSTICES.

Nathaniel Peaslee Sargeant, appointed 1790, died 1791; Francis Dana, appointed 1791, resigned 1806; Theophilus Parsons, appointed 1806, died 1813; Samuel Sewall, appointed 1814, died 1814; Isaac Parker, appointed 1814, died 1830; Lemuel Shaw, appointed 1830, resigned 1860; George Tyler Bigelow, appointed 1860, resigned 1868; Reuben Atwater Chapman, appointed 1868, died 1873; Horace Gray, appointed 1873, resigned 1882; Marcus Morton, appointed 1882, resigned 1890;

Walbridge Abner Field, appointed 1890, died 1899;
Oliver Wendell Holmes, appointed 1899.

ASSOCIATE JUSTICES.

Increase Sumner, appointed 1782, resigned 1797;
Francis Dana, appointed 1785, Chief Justice 1791; Robert Treat Paine, appointed 1790, resigned 1804; Nathan Cushing, appointed 1790, resigned 1800; Thomas Dawes, appointed 1792, resigned 1802; Theophilus Bradbury, appointed 1797, removed 1803; Samuel Sewall, appointed 1800, Chief Justice 1814; Simeon Strong, appointed 1801, died 1805; George Thacher, appointed 1801, resigned 1824; Theodore Sedgwick, appointed 1802, died 1813; Isaac Parker, appointed 1806, Chief Justice 1814; Charles Jackson, appointed 1813, resigned 1823; Daniel Dewey, appointed 1814, died 1815; Samuel Putman, appointed 1814, resigned 1842; Samuel Sumner Wilde, appointed 1815, resigned 1850; Levi Lincoln, appointed 1824, resigned 1825; Marcus Morton, appointed 1825, resigned 1840; Charles Augustus Dewey, appointed 1837, died 1866; Samuel Hubbard, appointed 1842, died 1847; Charles Edward Forbes, appointed 1848, resigned 1848; Theron Metcalf, appointed 1848, resigned 1865; Richard Fletcher, appointed 1848, resigned 1853; George Tyler Bigelow, appointed 1850, Chief Justice 1860; Caleb Cushing, appointed 1852, resigned 1853; Benjamin Franklin Thomas, appointed 1853, resigned 1859; Pliny Merrick, appointed 1853, resigned 1864; Ebenezer Rockwood Hoar, appointed 1859, resigned 1869; Reuben Atwater Chapman, appointed 1860, Chief Justice 1868; Horace Gray, appointed 1864, Chief Justice 1873; James Denison Colt, appointed 1865, resigned 1866; Dwight Foster, appointed 1866, resigned 1869; John Wells, appointed 1866, died 1875; James Denison Colt, appointed 1868, died 1881;

Seth Ames, appointed 1869, resigned 1881; Marcus Morton, Jr., appointed 1869, Chief Justice 1882; Wm. Crowninshield Endicott, appointed 1873, resigned 1882; Charles Devens, appointed 1873, resigned 1877; Otis Phillips Lord, appointed 1875, resigned 1882; Augustus Lord Soule, appointed 1877, resigned 1881; Walbridge Abner Field, appointed 1881, Chief Justice 1890; Charles Devens, appointed 1881, died 1891; William Allen, appointed 1881, died 1891; Charles Allen, appointed 1882, resigned 1898; Waldo Colburn, appointed 1882, died 1885; Oliver Wendell Holmes, appointed 1882, Chief Justice 1899; William Sewall Gardner, appointed 1885, resigned 1887; Marcus Perrin Knowlton, appointed 1887; James Madison Morton, appointed 1890; John Lathrop, appointed 1891; James Madison Barker, appointed 1891; John Wilkes Hammond, appointed 1898; William Caleb Loring, appointed 1899.

The following are such notices of the Judges of this court as the writer finds room for in this narrative:

Nathaniel Peaslee Sargeant has already been noticed as a Judge of the Superior Court of Judicature.

Francis Dana has already been noticed as a Barrister.

Theophilus Parsons has been noticed as a Barrister.

Samuel Sewall was born in Boston, December 11, 1757, and graduated at Harvard in 1776. He settled in Marblehead, from which town he was a Representative to the General Court and he was also a member of Congress from 1797 to 1800. He was appointed Associate Justice in 1800, Chief Justice in 1814, and died at Wiscasset, Maine, June 8, 1814.

Isaac Parker was descended from John Parker, who came from Biddeford, England, to Saco, Maine, and in 1650 bought the Island in the Kennebec River, called Parker's Island, and there died in 1661. Judge Parker was born in Boston, June 17, 1768, and graduated at

Harvard in 1786. He studied law with William Tudor and was admitted to the Suffolk bar in 1789. He settled first in Castine, Maine, was a Representative in 1791-3-4-5, member of Congress from 1797 to 1799 and United States Marshal from 1799 to 1801. He was eleven years trustee of Bowdoin College, twenty years an Overseer of Harvard and Royal Professor of Law at the Harvard Law School from 1816 to 1827, receiving a degree of LL. D. from Harvard in 1814. He was appointed Associate Justice of the Supreme Judicial Court in 1806 and Chief Justice in 1814, serving until his death, May 26, 1830.

Lemuel Shaw, son of Oakes and Susannah (Hayward) Shaw, was born in Barnstable, Mass., January 9, 1781, and graduated at Harvard in 1800, having been fitted for college by his father and Rev. William Salisbury of Braintree. After leaving college he was Usher in the Franklin (Brimmer) School, under Dr. Asa Bullard, principal and assistant editor of the Boston Gazette. In 1801 he entered as a student the law office of David Everett, of Boston, and after a further course of study in Boston and Amherst, N. H., he was admitted to the bar in Hopkinton, N. H., in September, 1804. He was afterwards in November of the same year admitted to the Massachusetts bar at Plymouth and settled in Boston. He was a Representative in 1811-12-13-14-15 a member of the State Constitutional Convention of 1820, Senator in 1821-22 and 28-29, and wrote the Act incorporating the city of Boston, with the exception of the section relating to public theatres and exhibitions and the section establishing the Police Court of Boston, which were drafted by William Sullivan. He was a member of the Boston Library Society, the Humane Society, the Massachusetts Historical society, the Society for the propagation of the gospel among the Indians

in North America and the Academy of Arts and Sciences, a member of the Board of Overseers of Harvard University twelve years, and one of the corporation of Harvard twenty-seven years. On the 23d of August, 1830, he was appointed Chief Justice of the Supreme Judicial Court, and resigned August 31, 1860. He received the degree of LL. D. from Harvard in 1831, and from Brown in 1850. He married first January 6, 1818, Elizabeth, daughter of Joseph Knapp of Boston, and second in August, 1827, Hope, daughter of Dr. Samuel Savage of Barnstable, and died in Boston March 30, 1861.

George Tyler Bigelow, son of Tyler and Clara, daughter of Colonel Timothy Bigelow of Boston, was born in Watertown, Mass., October 6, 1810, and graduated at Harvard in 1829. After leaving college he was tutor in the family of Henry Vernon Somerville at Bloomsbury, Md., and after reading law with his father was admitted to the Middlesex County bar in December, 1833, after a further short period of study in the office of Charles G. Loring of Boston. He began practice in Watertown but in 1835 removed to Boston where he acquired a fondness for military life, and in May, 1837, joined the New England Guards, becoming Ensign and Captain and later Colonel of the Boston Regiment. In 1843 he formed a partnership with Manlius S. Clarke and in 1844 defended Abner Rogers indicted for the murder of the warden of the State Prison whose acquittal he secured on the ground of insanity. He was both Representative and Senator, and in 1848 was appointed Judge of the Common Pleas Court. In 1850 he was appointed Associate Justice of the Supreme Judicial Court and in 1860 Chief Justice. He resigned in 1868 and became Actuary of the Massachusetts Hospital Life Insurance Company, serving until his death,

April 12, 1878. He married, November 5, 1839, Anna, daughter of Edward Miller of Quincy, Mass. He received a degree LL. D. from Harvard in 1853.

Reuben Atwater Chapman, the son of a farmer, was born in Russell, Mass., September 20, 1801. He was first a clerk in a store in Blandford and after studying law in that town was admitted to the bar and practiced in Westfield, Monson, Ware and Springfield, in which last place he was associated with George Ashmun. He was appointed Associate Justice of the Supreme Judicial Court in 1860 and Chief Justice in 1868, serving until his death which occurred in Fluelen, Switzerland, June 28, 1873. He received the degree of Master of Arts from Williams in 1836 and Amherst in 1841, and the degree of LL. D. from Amherst in 1861 and Harvard in 1864.

Horace Gray, son of Horace, was born in Boston in 1828 and graduated at Harvard in 1845 and from the Harvard Law School in 1849. He was admitted to the Suffolk bar February 14, 1851, and in 1854 was appointed reporter of the decisions of the Supreme Judicial Court. His reports are contained in sixteen volumes covering the period from the Suffolk and Nantucket term in 1854 to the Suffolk term in November, 1860. In 1864 he was appointed Associate Justice and in 1873 Chief Justice. In 1882 he was made Associate Justice of the United States Supreme Court and is still on the bench.

Marcus Morton, Jr., son of Judge Marcus and Charlotte (Hodges) Morton, was born in Taunton, Mass., April 8, 1819, and graduated at Brown University in 1838 and at the Harvard Law School in 1840. After completing his law studies in the office of Peleg Sprague and William Gray in Boston, he was admitted to the Suffolk bar, July 12, 1841. In 1850 he took up his

residence in Andover with his office in Boston and in 1853 represented Andover in the State Constitutional Convention and in 1858 in the House of Representatives. In 1858 he was appointed Judge of the Superior Court of Suffolk and remained on the bench until the abolition of that court in 1859. In 1859 he was appointed Judge of the newly organized Superior Court and continued to serve until April 15, 1869, when he was appointed an Associate Justice of the Supreme Judicial Court. On the 16th of January, 1882, he was appointed Chief Justice, and on the 27th of August, 1890, resigned. He married Abby B., daughter of Henry and Amy (Harris) Hoppin of Providence, and died in Andover, February 10, 1891.

Walbridge Abner Field, son of Abner and Louisa Griswold Field, was born in Springfield, Vt., April 26, 1833, and graduated at Dartmouth in 1855. He was a tutor at Dartmouth in 1856 and 1857 and 1859. He studied law in the Harvard Law School and in the office of Harvey Jewell in Boston, and was admitted to the Suffolk bar May 12, 1860. In 1865 he was appointed Assistant United States District Attorney and served until 1869, when he was appointed Assistant Attorney General of the United States. He returned to Boston in 1870 and resumed practice with Harvey Jewell and William Gaston under the firm name of Jewell, Gaston and Field. In 1881 he was appointed Judge of the Supreme Judicial Court, and in 1890 Chief Justice, serving until his death in Boston July 15, 1899. He was a member of the Forty-sixth Congress. He married, first, in 1869, Eliza E. McLoon, and second, in 1882, Frances E., daughter of Nathan A. Farwell, of Rockland, Maine.

Oliver Wendell Holmes, son of Oliver Wendell and Amelia Lee (Jackson) Holmes, was born in Boston

March 8, 1841, and graduated at Harvard in 1861. He served in the war of 1861 as First Lieutenant in the 20th Massachusetts infantry, and afterwards as Lieutenant Colonel and Brevet Colonel, and was wounded at Balls Bluff, Antietam and Fredericksburg. He graduated at the Harvard Law School in 1866, and after further study in the office of Robert M. Morse and George O. Shattuck in Boston he was admitted to the Suffolk bar March 4, 1867. His lectures at the Lowell Institute upon the common law established his reputation, and in 1882 he was appointed Professor in the Harvard Law School. In the same year he was appointed Associate Justice of the Supreme Judicial Court, and in 1899 Chief Justice. In 1886 he received the degree of LL. D. from Yale. He married, June 17, 1872, Fanny Bowditch, daughter of Epes Sargent Dixwell.

Increase Sumner, son of Increase Sumner of Roxbury, was born in that town November 27, 1746, and graduated at Harvard in 1767. After teaching school he studied law with Samuel Quincy in Boston, and was admitted to the Suffolk bar in 1770. He settled in Roxbury, was Representative from 1776 to 1780, Senator from 1780 to 1782, and in the latter year was appointed to the bench of the Supreme Judicial Court. He served until chosen Governor in 1797, and while holding the latter office died June 7, 1799. He married, September 29, 1779, a daughter of William Hyslop, of Brookline.

Robert Treat Paine, son of Thomas and Eunice (Treat) Paine, was born in Boston, March 11, 1731, and graduated at Harvard in 1749, receiving the degree of LL. D. from his alma mater in 1805. His father was at one time pastor of a church in Weymouth and later a merchant in Boston. Judge Paine after leaving college, taught school for a time and afterwards made three

voyages as master to North Carolina and one to Greenland for whales. He studied for the ministry and in 1755 served as Chaplain in the French war. He finally studied law with Judge Willard of Lancaster, and with Benjamin Pratt of Boston, and was admitted to the Suffolk bar in 1759. He first settled in Boston and then in Taunton, which town in 1769 he represented in the General Court. In 1770 he conducted the prosecution of Captain Preston in the Boston massacre trial in the absence of the Attorney General and 1774-5 was a delegate to the Provincial Congress. From 1774 to 1778 he was a member of the Continental Congress and in 1777 was Speaker of the House of Representatives. He was appointed Attorney General during the Revolution and held office until 1790. In 1776 he declined an appointment to the bench of the Superior Court of Judicature and in 1779 was a member of the State Constitutional Convention. About 1780 he removed to Boston and in 1790 was appointed to the bench of the Supreme Judicial Court which office he resigned in 1804. He will be always remembered as a signer of the Declaration of Independence. He married in 1770, Sally, daughter of Thomas Cobb, of Taunton, and died in Boston, May 11, 1814.

Nathan Cushing was born in Scituate, Mass., September 24, 1742, and graduated at Harvard in 1763. He was appointed to the Supreme Judicial Court in 1790 and resigned in 1800. He died at Scituate, November 2, 1812.

Thomas Dawes, son of Col. Thomas, was born in Boston, July 8, 1758, and graduated at Harvard in 1777. He studied law with John Lowell in Boston, and was admitted to the Suffolk bar in 1780. He was appointed in 1790 Judge of Probate for Suffolk County and in 1792 Judge of the Supreme Judicial Court. He

resigned in 1802 and was again appointed Judge of Probate holding office until his death, July 22, 1825. He was also appointed in 1802 Judge of the "Municipal Court in the town of Boston," and held that office until succeeded by Josiah Quincy, January 16, 1822.

Theophilus Bradbury has been noticed as a Barrister but as the statement in the Legislative Manual that he was removed from the bench may be misunderstood, an explanation is due to that learned and incorruptible judge. He became paralyzed in February, 1802, and his disability continuing for more than a year without hope of recovery, he was removed by the Governor and Council upon the address of both houses of the Legislature.

Simeon Strong has been noticed as a Barrister.

George Thacher, son of Peter, was born in Yarmouth, Mass., April 12, 1754, and graduated at Harvard in 1776. He studied law with Shearjashub Bourne, in Barnstable and was admitted to the bar in 1778. He practiced in York and Biddeford, Maine, and was a member of Congress from 1788 to 1801 as well as a District Judge in Maine. In 1801 he was appointed to the Supreme Judicial Court and resigned in 1824. He was a member of the convention in 1819 which framed the constitution of Maine. He married Mary, daughter of Samuel Phillips Savage, of Weston, Mass., and died in Biddeford, Maine, April 6, 1824.

Theodore Sedgwick has been noticed as a Barrister.

Charles Jackson, son of Jonathan, was born in Newburyport, Mass., May 31, 1775, and graduated at Harvard in 1793. He studied law with Theophilus Parsons and was admitted to the Essex County bar in 1796. In 1803 he removed to Boston and formed a partnership with Samuel Hubbard. He was appointed to the

Supreme Judicial Court in 1813, resigned in 1824 and died in Boston December 13, 1855.

Daniel Dewey was born in Sheffield, Mass., January 29, 1766, and after studying law with Theodore Sedgwick settled in 1787, in Williamstown, Mass. He was a member of the Council, member of Congress in 1813-14 and served as Judge of the Supreme Judicial Court from his appointment in 1814 till his death May 26, 1815.

Samuel Putnam was born in Danvers, Mass., April 13, 1768, and graduated at Harvard in 1787. He began practice in Salem in 1790, was State Senator in 1808, '9, '13, '14. Representative in 1812 and Judge of the Supreme Judicial Court from 1814 to 1842. He died at Somerville July 3, 1853.

Samuel Sumner Wilde was born in Taunton, Mass., February 5, 1771, and graduated at Dartmouth in 1789. He studied law with Judge Paddleford in Taunton and was admitted to the bar in 1792. He began practice in Waldoboro, Maine, but moved in 1794 to Warren, Maine, and in 1799 to Hallowell. In 1815, he was appointed to the Supreme Judicial Court and in 1820, when the district of Maine was set off as a state, he moved to Newburyport and in 1831 to Boston. He was a member of the Hartford Convention, a member of the State Constitutional Convention of 1820 and twice a Presidential Elector. He received a degree from Bowdoin in 1817, Harvard in 1841 and Dartmouth in 1849. He married Eunice, daughter of David Cobb of Taunton and having resigned his seat on the bench in 1850 died at his home in Boston June 22, 1855.

Levi Lincoln, son of Levi, was born in Worcester, Mass., October 25, 1782, and graduated at Harvard in 1802. He studied law with his father and settled in Worcester. He was Senator in 1812 and 1844 and 1845, being Presi-

dent in the latter year, Speaker of the House of Representatives in 1822, Lieutenant Governor in 1823, Governor from 1825 to 1834, member of Congress from 1835 to 1841, and Collector of the Port of Boston from 1841 to 1843. He died in Worcester, May 29, 1868.

Marcus Morton son of Nathaniel and Mary (Cary) Morton, was born in Freetown, Mass., February 19, 1784 and graduated at Brown in 1804. He studied law in the Law School in Litchfield, Conn., and was admitted to the Norfolk bar about 1807. He settled in Taunton, was Clerk of the Massachusetts Senate in 1811, member of Congress from 1817 to 1821, member of the Council in 1823 and Lieutenant Governor in 1824. In 1825 he was appointed to the bench of the Supreme Judicial Court and resigned in 1840 to take his seat as Governor, a position which he again held in 1843. In 1845 he was appointed Collector of the Port of Boston and held that office until 1848. He was a member of the Constitutional Convention of 1853 and a Representative in 1858. He received the degree of LL. D. from Harvard in 1840. He married in 1807, Charlotte, daughter of James Hodges, of Taunton, and died in that town, February 6, 1864.

Charles Augustus Dewey son of Judge Daniel, was born in Williamstown, Mass., March 13, 1793, and graduated at Williams in 1811. He studied law with Theodore Sedgwick and settled in Williamstown where he remained until 1826, when he removed to Northampton. He was District Attorney from 1830 to 1837, when he was appointed to the bench of the Supreme Judicial Court. He remained on the bench until his death at Northampton, August 22, 1866.

Samuel Hubbard was born in Boston, June 2, 1785, and graduated at Yale in 1802. He settled first in Biddeford, Maine, but came to Boston in 1810, and was

associated in business with Charles Jackson. In 1842 he was appointed to the bench of the Supreme Judicial Court, and served until his death in Boston, December 24, 1847.

Charles Edwin Forbes was born in West Bridgewater, Mass., August 25, 1795, and graduated at Brown in 1815. He studied law in Enfield and Northampton, Mass., and was admitted to the bar in 1818. He was County Attorney of Hampshire County, a Representative, Judge of the Court of Common Pleas from 1847 to 1848, and in the latter year was appointed to the bench of the Supreme Judicial Court. He resigned after one year's service, and died in Northampton, February 13, 1881.

Theron Metcalf, son of Hanan and Mary (Allen) Metcalf, was born in Franklin, Mass., October 16, 1784, and graduated at Brown in 1805. He studied law with Mr. Bacon in Canterbury, Conn., and at the law school in Litchfield, Conn., then the only law school in the United States, and established by Tappan Reeve, Chief Justice of the Supreme Court of Connecticut. He was admitted to the bar in Connecticut, and after a year's study with Seth Hastings in Mendon, Mass., was admitted to the Norfolk County bar in Dedham by the Circuit Court of Common Pleas in 1808, and by the Supreme Judicial Court in 1811. He practiced in Franklin, Mass., a year, and moved to Dedham in 1809, and on the 5th of November in that year married Julia, daughter of Uriah Tracy, United States Senator from Connecticut. In 1817 he was appointed County Attorney for Norfolk County, and served twelve years. In 1831-3-4 he was Representative, and in 1835 Senator. In October, 1828, he opened a law school in Dedham, and in December, 1839, was appointed reporter of the decisions of the Supreme Judicial Court. His reports fill

thirteen volumes, and cover a period from the Suffolk March term in 1840 to the Essex November term in 1847. He was appointed to the bench of the Supreme Judicial Court February 25, 1848, and resigned in 1865. He received the degree of LL. D. from Brown in 1844, and Harvard in 1848, and died in Boston, November 13, 1875.

Richard Fletcher was born in Cavendish, Vt., January 8, 1788, and graduated at Dartmouth in 1806. He studied law with Daniel Webster and was admitted to the New Hampshire bar. In 1820 he was admitted to the Suffolk bar, was a member of Congress from 1837 to 1839 and Judge of the Supreme Judicial Court from 1848 to 1853. He received a degree of LL. D. from Dartmouth in 1846 and Harvard in 1849 and bequeathed to his alma mater \$100,000. He died in Boston June 21, 1869.

Caleb Cushing, son of Capt. John N. and Lydia (Dow) Cushing, was born in Salisbury, Mass., January 17, 1800, and graduated at Harvard in 1817. He was tutor at Harvard in mathematics and natural philosophy for two years and then studied law with Ebenezer Moseley of Newburyport and at the Harvard Law School. He was admitted to the Essex County bar in 1822 and established himself in Newburyport. He was a Representative in 1825-33-34, '45, '50, '59. In 1834 he was chosen member of Congress from the Essex North District, and Mr. Webster said that he had not been in his seat six weeks before he was looked upon as the highest authority on legislation of Congress on any given subject. He raised a regiment in Massachusetts for the Mexican War which he led as Colonel until appointed Brigadier General. In 1843 he was appointed Minister to China, returning in about a year with a treaty which was at once ratified. In 1852 he was appointed Asso-

ciate Justice of the Supreme Judicial Court, leaving the bench in 1853 to assume the position of Attorney General in the Cabinet of President Pierce. He was appointed by President Lincoln a Commissioner to adjust claims against Mexico, and by President Grant, Minister to Spain, and of counsel for the United States at Geneva. He married in 1823, Caroline, daughter of Samuel Sumner Wilde and died at Newburyport, January 2, 1879. It may perhaps be said with truth that on the whole he was the most learned man ever raised in Massachusetts.

Benjamin Franklin Thomas, a grandson of Isaiah Thomas, was born in Boston February 12, 1813, and graduated at Brown in 1830. He studied law in Worcester and was there admitted to the bar in 1834. He was a Representative in 1842 from Worcester, Judge of Probate for Worcester County from 1844 to 1848 and Associate Justice of the Supreme Judicial Court from 1853 until his resignation in 1859, when he removed to Boston. He was in Congress from 1861 to 1863 and in 1868 his appointment as Chief Justice of the Supreme Judicial Court failed to be confirmed by the executive council. He received the decree of LL. D. from Brown in 1853 and Harvard in 1854 and died September 27, 1878.

Pliny Merrick, son of Pliny and Ruth (Cutter) Merrick, was born in Brookfield, Mass., August 2, 1794, and graduated at Harvard in 1814. He studied law with Levi Lincoln in Worcester and was admitted to the Worcester County bar in 1817. He practiced first in Swansea, then in Taunton as a partner of Marcus Morton and in 1824 removed to Worcester. He was for several years District Attorney and in 1843 was appointed Judge of the Court of Common Pleas and resigned in 1848. In 1850 he was again appointed to the Common Pleas bench serving

until 1853, when he was appointed to the bench of the Supreme Judicial Court and removed to Boston, serving in that Court until 1864. In 1853 he received the degree of LL. D. from Harvard and was a Harvard overseer from 1852 to 1856. He was Senior Counsel with Edward D. Sohier, Junior, for Dr. John W. Webster on his trial for murder. He married Mary Rebecca daughter of Isaiah Thomas and died in Boston, February 1, 1867.

Ebenezer Rockwood Hoar, son of Samuel and Sarah (Sherman) Hoar, was born in Concord, Mass., February 21, 1816, and graduated at Harvard in 1835. He studied law with his father, with Emory Washburn in Worcester and at the Harvard Law School and was admitted to the bar in Worcester September 3, 1839. He was Judge of the Court of Common Pleas from 1849 to 1853, Associate Justice of the Supreme Judicial Court from 1859 to 1869, Attorney General of the United States under President Grant, a member of the Joint High Commission which made the treaty of Washington with Great Britain, State Senator, member of Congress, Regent of the Smithsonian Institution, Fellow of Harvard College, member and President of the Harvard Board of Overseers. He married, November 26, 1840, Caroline Downes, daughter of Nathan Brooks of Concord and died January 31, 1895. He received the degree of LL. D. from Harvard in 1868, and from Williams in 1861.

James Denison Colt was born in Pittsfield, Mass., October 8, 1819, and graduated at Williams in 1838. He began to study law while a tutor in a family in Natchez, Miss., with General Gaines and returning to Pittsfield in 1840, entered the office of Julius Rockwell. He finished his studies at the Harvard Law School and was admitted to the Berkshire bar in 1841. He became a

partner of Mr. Rockwell and so remained until the latter was appointed Judge of the Superior Court in 1859. He then was associated with his brother-in-law Thomas P. Pingree and in 1865 was appointed to the bench of the Supreme Judicial Court. He resigned on account of ill health in 1866 but was reinstated in 1868, and continued in office until his death August 9, 1881. He was a Representative in 1853-4 and in 1870 received the degree of LL. D. from Williams.

Dwight Foster was born in Worcester in 1828, and graduated at Yale in 1848. He was admitted to the bar in Worcester in 1849 and practiced in Worcester and Boston. He was Attorney General from 1861 to 1864 and sat on the bench of the Supreme Judicial Court from 1866 to 1869. He died April 18, 1884.

John Wells, son of Noah, was born in Rowe, Mass., February 17, 1819, and graduated at Williams in 1838. After teaching school for a time in Newport, R. I., he studied law in the office of Wells & Davis of Greenfield and at the Harvard Law School and was admitted to the Franklin County bar in 1841. He settled in Chicopee and in 1858 was appointed Judge of Probate and Insolvency, holding that office until his resignation in 1864. He was a Representative in 1849-51-57-65 and occupied a seat on the bench of the Supreme Judicial Court from 1866 until his death. He married May 15, 1850, Sophia Dwight, of Boston and died in Salem, November 23, 1875.

Seth Ames, son of Fisher Ames, was born in Dedham, Mass., April 19, 1805, and graduated at Harvard in 1825. He studied law at the Harvard Law School, in the office of George Bliss in Springfield, and in the office of Lemuel Shaw in Boston and was admitted to the Court of Common Pleas in Dedham in 1828, and to the Supreme Judicial Court in Cambridge in 1830. He began

practice in Lowell, was Representative in 1832, Senator in 1841 and City Solicitor of Lowell from 1842 to 1849. In 1849 he was appointed Clerk of the Courts for Middlesex County and removed to Cambridge, and in 1859 was appointed to the bench of the Superior Court of which he was made Chief Justice in 1867. In 1869 he was appointed Judge of the Supreme Judicial Court and removed to Brookline. He resigned his seat January 15, 1881, and died in Brookline, August 15 in the same year. He married in 1830 Margaret, daughter of Gamaliel Bradford of Boston, and in 1849 Abigail Fisher, daughter of Rev. Samuel Dana of Marblehead.

William Crowninshield Endicott, son of William Putnam and Mary (Crowninshield) Endicott, was born in Salem November 26, 1826, and graduated at Harvard in 1847, receiving the degree of LL. D. in 1882. He studied law at the Harvard Law School and in the office of Nathaniel J. Lord of Salem and was admitted to the Essex bar in 1850. He established himself in Salem, and from 1857 to 1864 was City Solicitor of Salem. In 1870 he was the Democratic candidate for Congress, and in 1871-2-3 the Democratic candidate for Attorney General. In 1873 he was appointed to the Supreme Judicial Court and resigned in 1882. In 1884 he was the Democratic candidate for Governor, and in 1885 was appointed Secretary of War by President Cleveland. In 1889 he resumed practice in Salem. He married Ellen, daughter of George Peabody of Salem, December 13, 1859, and died in Boston May 6, 1900.

Charles Devens, son of Charles and Mary (Lithgow) Devens, was born in Charlestown, Mass., April 4, 1820, and graduated at Harvard in 1838, receiving the degree of LL. D. in 1877. He studied law at the Harvard Law School and in the office of George T. Davis of Greenfield, and was admitted to the Franklin County bar in

1841. He was associated with Mr. Davis until 1849, representing Franklin County in the Senate in 1848. From 1849 to 1853 he was United States Marshal for Massachusetts, and in 1854 became associated in practice with George F. Hoar in Worcester. While Marshal it became his official duty to execute the process remanding to his alleged owner Thomas Sims, a fugitive slave, and until the war came on made unavailing efforts to purchase his freedom. After the emancipation proclamation had freed Sims, Mr. Devens assisted him, and when Attorney General of the United States gave him a place in his department. In April, 1861, he took command of a rifle battalion for three months' service and was posted at Fort McHenry in Baltimore harbor. He was afterwards commissioned Colonel of the 15th regiment of Massachusetts volunteers, raised for three years' service, and was engaged in the battle of Balls Bluff, where after the death of Col. Baker he was left in command. He was made Brigadier General of Volunteers April 15, 1862, and was engaged in the battles of Williamsburg, Fair Oaks, South Mountain and Antietam. At the battle of Chancellorsville he commanded a division of the Eleventh corps, and in 1864-5 was attached to the Eighteenth corps. In December, 1864, he commanded the Twenty-fourth corps, and in April, 1865, was brevetted Major General. He was mustered out in June, 1866, and in 1867 was appointed to the bench of the Superior Court, remaining on the bench until 1873, when he was appointed to the Supreme Judicial Court. In 1877 he left the bench for the position of United States Attorney General in the cabinet of President Hays, and after his retirement was again, in 1881, called to the Supreme Judicial bench. He died in Boston, January 7, 1891.

Otis Phillips Lord, son of Nathaniel and Eunice (Kim-

ball) Lord, was born in Ipswich, Mass., July 11, 1812, and graduated at Amherst in 1832. He studied law with Oliver B. Morris of Springfield, and at the Harvard Law School, and was admitted to the Essex bar in December, 1835. He first settled in Ipswich, but removed in 1844 to Salem, which place he represented in the Legislature in 1847-8, '52, '53, '54, serving the last year as Speaker. He was State Senator in 1849, a member of the Constitutional Convention in 1853, and in 1859 was appointed Judge of the Superior Court, holding his seat until appointed December 21, 1875, Judge of the Supreme Judicial Court. He resigned December 8, 1882, and died in Salem, March 13, 1884.

Augustus Lord Soule, son of Gideon L. Soule, was born in Exeter, N. H., April 19, 1827, and graduated at Harvard in 1846. He studied law in New Hampshire and at the Harvard Law School and was admitted to the bar in 1849. He settled in Chicopee at first and after two years removed to Springfield. He was appointed to the bench of the Supreme Judicial Court in 1877 and in 1880 removed to Boston. He resigned his seat on the bench in 1881 and died at Franconia, N. H., August 24, 1887.

William Allen, son of William, was born in Brunswick, Maine, March 31, 1822, and graduated at Amherst in 1842. He studied law at the Yale Law School and at Northampton and was admitted to the bar in 1845. He sat on the bench of the Supreme Judicial Court from 1881 until his death June 4, 1891.

Charles Allen, son of Sylvester and Harriet (Ripley) Allen, was born in Greenfield, Mass., April 27, 1827, and graduated at Harvard in 1847, receiving the degree of LL. D. in 1892. He read law in the office of George T. Davis, of Greenfield, and at the Harvard Law School and was admitted to the bar at Northampton Septem-

ber 30, 1850. He remained in Greenfield in practice until 1862 when he was appointed Reporter of Supreme Court decisions and removed to Boston. He held the office of Reporter until 1867 and his Reports are contained in fourteen volumes covering a period from the Suffolk January term of 1861 to the Suffolk January term of 1867. From 1867 to 1872 he was Attorney General and in 1880 he was appointed one of the Commissioners to revise the statutes of the Commonwealth. In 1882 he was appointed to the Supreme Judicial bench and resigned in 1898.

Waldo Colburn, son of Thatcher and Hattie Cleveland Colburn, was born in Dedham, Mass., November 13, 1824. He was educated at the public schools and at Phillips Andover Academy. In 1847 he began to read law with Ira Colburn, of Dedham, and was admitted to the Norfolk bar May 3, 1850, after spending a short time at the Harvard Law School. In 1875 he was appointed Judge of the Superior Court, serving until 1882 when he was appointed to the bench of the Supreme Judicial Court. He was a Representative in 1853-54, Senator in 1870 and for several years the Democratic candidate for Attorney General. He married first, November 21, 1852, Mary Ellis, daughter of Bunker Gay, of Dedham, and second, August 5, 1861, Elizabeth C., daughter of Ezra W. Sampson of Dedham. He remained on the bench until his death September 26, 1885.

William Sewall Gardner was born in Hallowell, Maine, October 1, 1827, and graduated at Bowdoin in 1850. He studied law in Lowell and was admitted to the Middlesex bar in October, 1852. He began practice in Lowell associated with Theodore H. Sweetser, but removed to Boston in 1861. In 1875 he was appointed to the bench of the Superior Court and in 1885 was

promoted to the Supreme Judicial Court. He resigned September 7, 1887, and died in Newton April 4, 1888.

Marcus Perrin Knowlton, son of Merrick and Fatima (Perrin) Knowlton, was born in Wilbraham, Mass, February 3, 1839, and graduated at Yale in 1866. After leaving college he taught school a year in Norwalk, Conn., and reading law in the offices of James G. Allen, of Palmer, and Augustus L. Soule, of Springfield, he was admitted to the bar in Springfield in 1862. In 1881 he was appointed to the bench of the Superior Court and in 1887 was promoted to the Supreme Judicial Court where he still holds a seat. He married, July 18, 1867, Sophia, daughter of William and Saba A. (Cushman) Ritchie, of Springfield.

James Madison Morton graduated at the Harvard Law School in 1861 and was admitted to the Bristol County bar September 20, in that year. He practiced in Fall River and in 1890 was appointed Judge of the Supreme Judicial Court. He is now on the bench.

John Lathrop, son of John P. and Maria M. Lathrop, was born in Boston, February 8, 1835, and graduated at Burlington College, New Jersey, in 1853 and at the Harvard Law School in 1855. After further study in the office of Charles Greeley Loring, Francis Caleb Loring and Caleb William Loring, he was admitted to the Suffolk bar in 1856, and to practice in the United States Supreme Court in 1872. In the war of 1861 he was Captain in the 35th Massachusetts Regiment in 1862 and 1863, Reporter of the decisions of the Supreme Court from 1874 to 1888, vols. 115 to 145 inclusive, Judge of the Superior Court from 1888 to 1891, and was appointed to the bench of the Supreme Judicial Court, January 28, 1891, which position he still holds. He has been a Lecturer at the Harvard and Boston Law Schools, and the editor of several law books. He mar-

ried in Boston, June 24, 1875, Eliza D., daughter of Richard G. Parker, and lives in Boston.

James Madison Barker, son of John V. and Sarah (Althorp) Barker, was born in Pittsfield, Mass., October 23, 1839, and graduated at Williams in 1860. He studied law at the Harvard Law School, and was admitted to the Suffolk bar, January 13, 1863. He practiced in Pittsfield, associated at different times with Charles N. Emerson and Thomas P. Pingree until 1882, when he was appointed Judge of the Superior Court. In 1891 he was promoted to the Supreme Judicial Court, and is still on the bench. He was a Representative in 1872-3, and in 1881 a Commissioner for the revision of the statutes. He married in Bath, N. Y., September 21, 1864, Helena, daughter of Levi Carter and Pamela Nelson (Woods) Whiting.

John Wilkes Hammond, son of John Wilkes and Maria Louisa (Southworth) Hammond, was born in Mattapoisett (then Rochester), December 16, 1837, and graduated at Tufts in 1861. He afterwards taught school in Tisbury, Stoughton, Wakefield and Melrose, serving during an interval nine months in the 3d Massachusetts Regiment. He studied law at the Harvard Law School and in the office of Sweetser & Gardner in Boston, and was admitted to the Middlesex bar in March, 1861. He settled in Cambridge, which place he represented in the General Court in 1872-3, was City Solicitor three years and in 1886 was appointed to the bench of the Superior Court. In 1898 he was promoted to the Supreme Judicial Court and is now on the bench. He married in Taunton, August 15, 1866, Clara Ellen, daughter of Benjamin F. and Clara (Foster) Tweed.

William Caleb Loring, son of Caleb William and Elizabeth Smith (Peabody) Loring, and grandson of

Charles Greeley Loring, an eminent member of the Suffolk bar, was born in Beverly, Mass., August 24, 1851, and graduated at Harvard in 1872. He graduated at the Harvard Law School in 1874 and was admitted to the Suffolk bar in June of that year. From December, 1876 to July, 1878, he was Assistant Attorney General of the Commonwealth, and in 1899 was appointed to the bench of the Supreme Judicial Court.

On the date of the passage of the Act establishing the Supreme Judicial Court, July 3, 1782, another Act was passed establishing a Court of Common Pleas which took the place of the Inferior Court of Common Pleas, established by an Act passed June 27, 1699. The Court of Common Pleas was a County Court kept by four Judges, appointed from within each county, holding jurisdiction in all civil actions of more than forty shillings. It bore the same relation to the old Inferior Court of Common Pleas which the Supreme Judicial Court bore to the Superior Court of Judicature. The Judges of this Court in the various counties which continued until June 21, 1811, were in :

Barnstable, David Thacher, Samuel Savage, Ebenezer Bacon, David Scudder, Samuel Waterman and Nathaniel Freeman.

Berkshire, Charles Goodrich, Elijah Dwight, Jahleel Woodbridge, Thomas J. Skinner, John Bacon, Nathaniel Bishop, David Noble and William Walker.

Bristol, Samuel Tobey, Stephen Burbank, Edward Pope, Samuel Fales, Laban Wheaton and Seth Washburn.

Dukes, John Allen, Benjamin Bassett, Beriah Norton, Matthew Mayhew and William Jernigan.

Essex, Samuel Phillips, Benjamin Greenleaf, John Pickering, Jr., Samuel Holton, Nathan Dane, Ebenezer

March, John Treadwell, Timothy Pickering and David Kilham.

Hampshire, Samuel Lyman, Moses Bliss, Samuel Henshaw, Joseph Lyman, Jonathan Leavitt and John Hooker.

Middlesex, John Tyng, Henry Gardner, Samuel P. Savage, John Remington, James Prescott, Nathaniel Gorham, James Winthrop, William Hull and Ephraim Wood.

Nantucket, Stephen Huzzey, George Gardner, William Hammatt, James Coffin and Walter Folger, Jr.

Norfolk, Samuel Niles, Richard Cranch, William Heath, Stephen Metcalf, Nathaniel Ames, John Reed, Edward H. Robbins, Oliver Everett, Daniel Perry, Samuel Haven, Moses Everett and Thomas Boylston Adams.

Plymouth, Ephraim Spooner, Daniel Howard and Kilburn Whitman.

Suffolk, Oliver Wendell, Samuel Bassett, Thomas Crafts, William Denison, George Richards Minot, Shearjashub Bourne and William Wetmore.

Worcester, Artemas Ward, Moses Gill, Samuel Baker, Joseph Dorr, Dwight Foster, Michael Gill, Elijah Brigham, John Sprague, Jonathan Warner and Benjamin Heywood.

On the 21st of June, 1811, the Court of Common Pleas was abolished and the Circuit Court of Common Pleas was established in its place. The Act passed at that date provided that the Commonwealth except Nantucket and Dukes County, should be divided into six circuits, as follows: the Middle Circuit, including Suffolk, Essex and Middlesex counties; the Western Circuit, including Worcester, Hampshire and Berkshire counties; the Southern Circuit, including Norfolk, Plymouth, Bristol and Barnstable counties; the First East-

ern Circuit, including York, Cumberland and Oxford counties; the Second Eastern Circuit, including Lincoln, Kennebec and Somerset counties; and the Third Eastern Circuit, including Hancock and Washington counties.

The Act also provided that "there shall be held and kept in each county in the several circuits aforesaid, at such times and places as are now by law appointed for holding the Court of Common Pleas in the several counties, a Circuit Court of Common Pleas to consist of one Chief Justice and two Associate Justices, each of whom shall be an inhabitant of the Commonwealth, and any two of them shall be a Court . . . with original jurisdiction of all civil actions . . . (excepting only such actions wherein the Supreme Judicial Court or where Justices of the Peace now have original jurisdiction) and shall also have jurisdiction of all such offenses, crimes and misdemeanors as before the passage of this Act were cognizable by the respective Courts of Common Pleas." This Court had appellate jurisdiction in the case of sentences or judgments of a justice of the peace and the Act provided "that all actions, suits, matters and things which may be pending in the several Courts of Common Pleas on the second of December (1811), and all writs, executions, warrants, recognizances and processes returnable" to the Common Pleas Court shall be returnable to the Circuit Court of Common Pleas. This Court continued until February 14, 1821, but in the mean time by an Act passed February 26, 1814, Suffolk County, was taken out of the Middle Circuit and given a court of its own which will be mentioned hereafter.

The Judges of the Circuit Court of Common Pleas in the various circuits within the present limits of Massachusetts were as follows:

“*Middle Circuit.*—Samuel Dana, William Wetmore, Stephen Minot.

“*Southern Circuit.*—Richard Sears, Calvin Tilden, Seth Washburn, Apollos Tobey, Nahum Mitchell, Elisha Ruggles, John Thomas, John M. Williams, Thomas Boylston Adams, Jairus Ware, Ebenezer Warren, Samuel Bass, Joseph Heath, Samuel Swett.

“*Western Circuit.*—Ezekiel Bacon, Joseph Whiton, Wolcott Hubbell, Elijah Paine, Edward Bangs, Jonathan Leavitt, Ezra Starkweather, Samuel Porter, Benjamin Kimball, Oliver Crosby Paine, John Hooker, Abner Brown, Amos Hamilton, Aaron Tufts.”

Suffolk was taken out of the Middle Circuit by an Act passed February 26, 1814, which gave that county a Court of its own. The Act provided that after the 28th of March, 1814, a Court of Common Pleas should be held at Boston for the County of Suffolk on the first Tuesdays of January, March, May, July, September and November to be called “the Boston Court of Common Pleas.” It was to have one Judge with jurisdiction over all causes of a civil nature which had been cognizable by the Circuit Court of Common Pleas. It was also to have original and concurrent jurisdiction in all civil actions in the county of Suffolk under the sum of twenty dollars, and to hold a Court to be called the Town Court for the summary trial without jury of all such actions on Wednesday of every week. The Clerk of said Court was to be called “Recorder” and to have power to hold the Court in case of the death or absence of the Judge. This Court continued until the act was passed February 14, 1821, establishing a Court of Common Pleas for the Commonwealth. The Judges of this Court were the following: Harrison Gray Otis, appointed March 16, 1814; William Minot, appointed

March 2, 1818; William Prescott, appointed April 21, 1818; Artemas Ward, appointed May 11, 1819.

Another court was established for Boston at an earlier date than the Boston Court of Common Pleas. An Act was passed March 4, 1800, to establish "a Municipal Court in the Town of Boston." It provided "that there shall be holden within and for the town of Boston on the first Monday of every month by such learned, able and discreet person as the Governor shall appoint and commission pursuant to the constitution, a court of justice by the name of the Municipal Court for the Town of Boston; that said court shall have full power to adjourn from day to day and shall have cognizance of all crimes and offences committed within the town of Boston which are now cognizable in the Court of General Sessions of the Peace; and cognizance of all crimes and offences against the By-Laws of the said town; of frauds, deceits, monopolies, forestalling, regrating, thefts and nuisances."

This Court had a longer life than any other except the Supreme Judicial Court established under the constitution. It was presided over by one Judge until March 1, 1843, when it was provided by law that the Judges of the Court of Common Pleas should be ex-officio the Judges of the Municipal Court. When the Superior Court of the County of Suffolk was established in 1855 the powers of the Judges of the Court of Common Pleas in relation to the Municipal Court were transferred to the new court, and when the Superior Court for the Commonwealth was established in 1859 the Municipal Court was finally abolished. The Judges of this Court at various times were George Richards Minot, appointed in 1800; Thomas Dawes, Jr., appointed in 1802; Josiah Quincy, appointed January 16, 1822, and Peter O Thacher, appointed May 14, 1823.

It may be well to refer at this stage of our narrative to the other Boston courts. On the 21st of May, 1855, an Act was passed to establish "the Superior Court of the County of Suffolk," which provided for the appointment of four Justices, one of whom should be a Chief Justice with jurisdiction "in all cases, and in the same manner and to the same extent in which the Court of Common Pleas has jurisdiction in said county, whether original and exclusive, concurrent or appellate; and they shall also have exclusive jurisdiction in all cases in which the Court of Common Pleas now has concurrent jurisdiction with the Supreme Judicial Court in said county, wherein the damages demanded on the property claimed shall not exceed in amount or value the sum of fifteen hundred dollars; and no action in which the said Superior Court may have jurisdiction under this act shall be brought in the Supreme Judicial Court in the County of Suffolk, except the damages therein demanded on the property claimed, shall exceed in amount or value the sum of fifteen hundred dollars, and when the plaintiff, or someone in his behalf, shall, before service of the writ, make oath or affirmation before some Justice of the Peace, that the matter sought to be recovered actually exceeds in amount or value the said sum."

The Act provided for six terms a year in Boston, and at any term, to suit public convenience, two sessions might be held. The city of Boston was to pay the expenses of the court, the Justices were to be ex-officio Justices of the Municipal Court, the terms of the Court of Common Pleas in the County of Suffolk were abolished, and "Judges of the said Superior Court and of the Court of Common Pleas might interchange services and hold mutual consultations in matters of law and as to rules of practice. This court was abolished by the Act passed April 5, 1859, establishing the present Superior

Court. The following Judges were appointed to this court during its short life of four years: Albert H. Nelson, Chief Justice, appointed October 13, 1855, who resigned in 1858; Josiah G. Abbott, Associate Justice, appointed October 13, 1855, who resigned in 1858; Stephen G. Nash, Associate Justice, appointed October 13, 1855; Charles P. Huntington, Associate Justice, appointed October 13, 1855; Marcus Morton, Jr., Associate Justice, vice Abbott, resigned, appointed March 14, 1858; Charles Allen, Chief Justice, vice Nelson, resigned, appointed March 19, 1858.

A Police Court was established in Boston by an Act passed February 23, 1822, which provided that "there shall be and hereby is established within and for the city of Boston, a Police Court, to consist of three learned, able and discreet persons, to be appointed and commissioned by the Governor pursuant to the Constitution, and the Session Justice shall preside in said court; and a court shall be held daily at nine of the clock A. M., and at three of the clock P. M., by some one or more of said Justices, and at any other times when necessary to take cognizance of all crimes, offences and misdemeanors whereof Justices of the Peace may take cognizance by law, and of all offences which may be cognizable by one or more of said Justices, according to the by-laws, rules and regulations which may be established by the proper authority of the city of Boston."

The Act also provided "that a court shall be held by one or more of said justices on two several days in each week, and as much oftener as may be necessary to be called and styled the Justices Court for the County of Suffolk which court shall have original, exclusive jurisdiction and cognizance of all civil suits and actions, which before and until the passing of this act, might by law be heard, tried and determined before any justice of the peace

within and for the County of Suffolk, and an appeal shall be allowed from all judgments in said Justices' Court in like manner as appeals are now allowed by law from judgments of justices of the peace in civil actions in the said County of Suffolk."

The final provision of the Act was "that it shall be of no force or effect unless a certain act establishing the City of Boston, passed at the present session shall be accepted by the inhabitants of the town of Boston pursuant to the provisions therein made."

The Police Court and the Justices' Court remained distinct, one exercising criminal and the other civil jurisdiction with the same Judges for both until 1860 when it was enacted in the General Statutes that "all cases and proceedings pending in or returnable to the Justices Court for the County of Suffolk, and the records and jurisdiction of said Court are transferred to the Police Court."

The Police Court was abolished by an Act passed May 29, 1866, and during its life of forty-four years the following Judges served on its bench:

Benjamin Whitman, appointed June 10, 1822; William Simmons, appointed June 10, 1822; Henry Orne, appointed June 10, 1822; John G. Rogers, appointed August 10, 1831; James C. Merrill, appointed February 10, 1834; Abel Cushing, appointed June 30, 1843; Thomas Russell, appointed February 26, 1852; Sebeus C. Maine, appointed November 3, 1858; George D. Wells, appointed May 31, 1859; Edwin Wright, appointed July 9, 1861; Mellen Chamberlain, appointed June 28, 1861.

The Act abolishing the Police Court passed May 29, 1866, established the present Municipal Court of the city of Boston. It provided that "there shall be established a court to be called the Municipal Court of the

city of Boston which shall have the same powers and jurisdictions in all actions and proceedings at law whether civil or criminal as the Police Court of the city of Boston now has, except as hereinafter provided," that "all cases now pending at the time this Act shall take effect whether civil or criminal in the Police Court of the city of Boston, shall be transferred to and have day in the proper day, and term of the Municipal Court of the city of Boston, and all writs, processes, complaints, petitions and proceedings whatever, which are made returnable or to be entered in said Police Court shall be returnable to and have day in the proper day and term of said Municipal Court ; that there shall be appointed, commissioned and qualified . . . three suitable persons as Justices of the Municipal Court of the city of Boston, one of whom shall be appointed . . . as Chief Justice thereof, one or more of whom shall hold a court for criminal business daily except Sundays or legal holidays in the forenoon at nine o'clock and in the afternoon except on Saturday at three o'clock, or some hour thereafter, and a court for civil business weekly, each term of which shall begin on Saturday." By an Act passed February 28, 1882, the number of Associate Justices was increased to three, by an Act passed May 29 to four, by another passed April 26, 1894 to five, and by still another passed April 28, 1899 to seven. By an Act passed June 10, 1870, it was provided that a special Justice should be appointed and by another Act passed April 1, 1896, that a second special should be appointed. The following are the Judges of this Court since its organization.

John W. Bacon, Chief Justice, appointed July 2, 1866 ; Francis W. Hurd, Associate, July 2, 1866 ; Mellen Chamberlain, Associate, June 29, 1866 ; Chief Justice, December 1, 1871 ; Joseph M. Churchill, Associate,

March 3, 1871; William E. Parmenter, Associate, December 12, 1871; Chief Justice, January 24, 1883; John Wilder May, Chief Justice, October 12, 1878; Wm. J. Forsaith, Special, January 23, 1872; Associate, March 9, 1882; Mathew J. McCafferty, Associate, January 24, 1883; George Z. Adams, Special, August 4, 1882; Associate, October 1, 1896; John H. Hardy, Associate, June 3, 1885; Benjamin R. Curtis, Associate, April 28, 1886; Frederick D. Ely, Associate, October 10, 1888; John H. Burke, Associate, February 11, 1891; John F. Brown, Associate, May 31, 1894; Henry S. Dewey, Special, October 9, 1896; Associate, May 17, 1899; George L. Wentworth, Special, October 2, 1896, Associate, May 17, 1899; John A. Bennett, Special, May 26, 1899; William Sullivan, Special, May 26, 1899.

The courts for the various Boston districts will be referred to in connection with the Police and District Courts of the Commonwealth.

The following are sketches as far as the writer has found available material of the Judges of the County Courts of Common Pleas established July 3, 1782; the Circuit Courts of Common Pleas established June 21, 1811; the Boston Court of Common Pleas established February 26, 1814; the Municipal Court of the town of Boston established March 4, 1800; the Superior Court of the County of Suffolk established May 21, 1855; the Police and Justices' Court of Boston established February 23, 1822, and the present Municipal Court of the city of Boston established May 29, 1866.

COUNTY COURTS OF COMMON PLEAS.

Nathaniel Freeman was born in Dennis, Mass., April 8, 1741, and settled as a physician in Sandwich in 1765. He afterwards studied law with Col. James Otis of Barnstable, and was Judge of Probate of Barnstable

County many years. He was a Representative, member of Congress from 1795 to 1799, and Chief Justice of the Barnstable County Court of Common Pleas.

David Scudder, son of Ebenezer, was born in Barnstable January 5, 1763, and was Clerk of the Courts of Barnstable County from 1809 to 1820. He was appointed Judge of the Court of Common Pleas for Barnstable County, 1803. He married Desire Gage.

Charles Goodrich was born in 1720, and settled in Pittsfield in 1753. He was a Representative in the Provincial General Court and a member of the Provincial Congress in 1774. He was a Judge of the Berkshire Court of Common Pleas from 1784 to 1788, and died in 1816.

Elijah Dwight was of Great Barrington, and served on the bench of the Berkshire Court of Common Pleas from 1787 to 1794.

Jahleel Woodbridge has been noticed as a Judge of the Inferior Court of Common Pleas.

Thomas J. Skinner of Williamstown was Judge of the Berkshire Court of Common Pleas from 1788 to 1807, and Chief Justice after 1795.

John Bacon has been noticed as a Judge of the Inferior Court of Common Pleas.

Nathaniel Bishop was born in Guilford, Conn., June 13, 1751, and settled in Richmond, Mass., in 1777. He was Representative, Register of Probate, Judge of the Common Pleas of Berkshire County, and Chief Justice of the Sessions, and died February 1, 1826.

David Noble was born in New Milford, Conn. December 9, 1744, and graduated at Yale in 1764. He settled in Williamstown, Mass., in 1770, and in 1795 was appointed Judge of the Court of Common Pleas for Berkshire County. He died March 4, 1803.

Samuel Tobey was son of Rev. Mr. Tobey of Berkley,

Mass., and was Representative, Senator and Judge of the Common Pleas Court for Bristol County. He died in 1825.

Edward Pope, Judge of the Common Pleas Court of Bristol County, practiced in Taunton, in 1782, and in New Bedford in 1788.

Samuel Fales, son of Nathaniel and Sarah Fales, was born in Bristol, R. I., September 15, 1750, and graduated at Harvard in 1773. He settled in Taunton and was Clerk of the Courts and afterwards Chief Justice of the Court of Common Pleas for Bristol County. He married Sarah, daughter of John Cooke of Toverton, R. I., and died in Boston, January 20, 1818.

Laban Wheaton, son of Dr. George and Elizabeth (Morey) Wheaton, was born in Norton, March 13, 1754, and graduated at Harvard in 1774. He studied divinity with Rev. Abiel Leonard of Woodstock, Conn., and in May, 1775, was appointed army chaplain. In 1785 he began to study law in Watertown and was admitted to the Suffolk bar in 1788. He settled in Norton, was Representative seven years, Member of Congress eight years, and in 1810 was appointed Chief Justice of the Bristol County Court of Common Pleas. In 1819 he was appointed Chief Justice of the Court of Sessions. He married in 1794 Fanny, daughter of Samuel Morey of Norton, and died March 23, 1846.

Matthew Mayhew has been noticed as Judge of the Inferior Court of Common Pleas.

William Jernigan, Judge of Dukes County Common Pleas, was of Edgartown.

George Cabot was born in Salem, December 3, 1751, and received an honorary degree of A. M. from Harvard in 1779. He made several voyages as Master and in 1776 was a member of the Provincial Congress. In 1786 he was appointed Judge of the Court of Common

Pleas for Essex County and in 1788 was a member of the Convention which adopted the Federal Constitution. In 1791 he was chosen United States Senator and in 1798 declined the appointment of Secretary of the Navy. He was President of the Hartford Convention and died in Boston, April 18, 1823.

John Treadwell graduated at Harvard in 1758, and died in 1811.

Samuel Nye graduated at Harvard in 1771, and died in 1834.

Nathan Read graduated at Harvard in 1781, and died in 1849.

Asa Andrews, son of Robert, was born in Shrewsbury, Mass., May 11, 1762, and graduated at Harvard in 1783. He studied law with Caleb Strong and settled in Ipswich. He was appointed Judge of the Essex County Common Pleas Court, December 19, 1809, and died in Ipswich, January 13, 1856.

John Prince graduated at Harvard in 1800, and was admitted to the Essex bar in 1804, and settled in Salem. He was appointed Judge of the Essex County Common Pleas Court, January 20, 1810, and died in 1848.

John Tyng has been noticed as Judge of the Inferior Court of Common Pleas.

Henry Gardner has been noticed as Judge of the Inferior Court of Common Pleas.

Samuel P. Savage has been noticed as Judge of the Inferior Court of Common Pleas.

John Remington has been noticed as Judge of the Inferior Court of Common Pleas.

James Prescott, appointed from Groton, Judge of the Middlesex County Court of Common Pleas, December 22, 1782, was practicing in Groton in 1792.

Nathaniel Gorham was born in Charlestown, Mass., May 27, 1738. He was a Representative from 1771 to

1775, delegate to Provincial Congress, a member of the Board of War, a delegate to Congress in 1782-3 and from 1785 to 1787 and in 1786 its President. He was appointed Judge of the Middlesex Court of Common Pleas July 1, 1785, and died at Canandaigua, N. Y., October 22, 1826.

James Winthrop was of Cambridge, and graduated at Harvard in 1769. He was appointed Judge of the Middlesex Court of Common Pleas, March 5, 1791, and died in 1821.

William Hull was born in Derby, June 24, 1753, and graduated at Yale. He studied law at Litchfield, Conn., and was admitted to the bar in 1775. In the Revolution he was Captain, Major and Lieutenant-Colonel, and afterwards State Senator and Major General in the Militia. He held the office of Governor of Michigan Territory from 1805 to 1812, when he was appointed to the command of the Northwestern Army. He finally returned to his home in Newton, where he died November 29, 1825. He was appointed Judge of the Middlesex Court of Common Pleas May 14, 1792.

Ephraim Wood, son of Ephraim and Mary (Buss) Wood was born in Concord, Mass., August 1, 1733. In early life he was a shoemaker, later Town Clerk and Selectman of Concord. He was appointed Judge of the Middlesex Court of Common Pleas, May 15, 1797, and died in Concord, April 8, 1814.

Artemas Ward has been noticed as Judge of the Inferior Court of Common Pleas.

Moses Gill has been noticed as Judge of the Inferior Court of Common Pleas.

Joseph Dorr has been noticed as Judge of the Inferior Court of Common Pleas.

Dwight Foster, son of Jedediah, was born in Brookfield, Mass., December 7, 1757, and graduated at Brown,

in 1774. He was admitted to the bar in 1780, and settled in Brookfield without a lawyer within twenty miles. He was High Sheriff of Worcester County in 1792, Representative, Senator, member of Congress from 1793 to 1799, United States Senator from 1800 to 1803, member of the Council, delegate to the Convention to frame the Constitution, and Chief Justice of the Worcester County Court of Common Pleas from 1801 to 1811. He died in 1823.

Michael Gill was of Princeton and sat on the bench of the Worcester County Court of Common Pleas from 1795 to 1798.

Elijah Brigham was born in Northboro, Mass., in 1751, and graduated at Dartmouth in 1778. He studied divinity but abandoned it for public life. He was Senator, Councillor, and member of Congress, and was appointed Judge of the Worcester Court of Common Pleas June 26, 1795, serving until 1811. He died in Washington in 1816.

John Sprague has been noticed as a Barrister.

Benjamin Heywood was born in Shrewsbury, Mass., and began life as a carpenter. He afterwards graduated at Harvard in 1775, and served as Captain in the Revolution. He settled as a lawyer in Worcester, and March 6, 1802 was appointed Judge of the Worcester County Court of Common Pleas. He died in 1816.

Moses Bliss graduated at Yale in 1755. He studied divinity and afterwards law, and was admitted to the Hampshire bar in 1761. He was appointed January 15, 1798, Judge of the Hampshire Common Pleas Court.

Samuel Henshaw of Northampton graduated at Harvard in 1773, and was Judge of Probate of Hampshire County from 1797 to 1809. He was appointed December 10, 1799, Judge of the Hampshire Court of Common Pleas and died in 1809.

Joseph Lyman was born in Northampton, Mass., October 22, 1767, and graduated at Yale in 1783. He settled in his native town and was Judge of Probate of Hampshire County, and a trustee of Williams College from 1814 to 1832. He was appointed February 24, 1804, Judge of the Hampshire Court of Common Pleas, and died in Northampton, December 11, 1847.

Jonathan Leavitt, son of Rev. Jonathan of Heath, Mass., graduated at Yale in 1786 and studied law in New Haven. He settled in Greenfield and was appointed March 1, 1808, Chief Justice of the Hampshire Court of Common Pleas. After the incorporation of Franklin County he was appointed October 14, 1812, Judge of Probate. He married a daughter of Ezra Stiles, President of Yale, and died in 1830.

John Hooker was of Springfield and was Judge of Probate of Hampden County.

Samuel Niles was son of Rev. Samuel Niles of Braintree, and was a Representative and Councillor before he was appointed Judge of the Norfolk County Court of Common Pleas in 1793.

Richard Cranch was born in Kingsbridge, Devon, England, in November, 1726, and came to Massachusetts in 1746. He received an honorary degree of Master of Arts from Harvard in 1780, and was appointed Judge of the Norfolk Common Pleas in 1793. He married Mary, daughter of Rev. Wm. Smith of Weymouth, and died October 16, 1811.

William Heath was born in Roxbury, March 2, 1737, and was bred a farmer. He was commander of the Ancient and Honorable Artillery Co., in 1770, and Colonel of the Suffolk Regiment, in 1774. He was a Representative in 1761, a delegate to Provincial Congress in 1774-5, Brigadier General of the Militia in 1774, Major General in 1775, and Major General in the

Continental Army in 1776. In 1777 he commanded the Eastern Department and afterwards on the Hudson. He was a delegate to the Federal Constitutional Convention in 1788, State Senator from 1780 to 1792 and in 1806 declined the position of Lieutenant Governor. He was appointed Judge of the Norfolk Common Pleas July 2 1793, and was also Judge of Probate. He died January 24, 1814.

John Reed was born in Sudbury, Mass., in 1728. He removed to Roxbury and learned the trade of tanner. He served as paymaster in the Revolution, was Representative in 1794, Senator from 1796 to 1799, a Councillor in 1801, and in 1793 was made Judge of the Norfolk Common Pleas. He died June 3, 1813.

Edward Hutchinson Robbins was born in Milton, Mass., February 19, 1758, and graduated at Harvard, in 1775. He studied law in Bridgewater with Oakes Angier and was a member of the Suffolk bar in 1780. He was Speaker of the Massachusetts House of Representatives from 1793 to 1802, Lieutenant Governor from 1802 to 1806, and Judge of Probate of Norfolk County from 1814 until his death. He owned large estates in Maine and the columns in front of the State House and in its Doric Hall were cut by Thomas Vose, of Robbinston, near West Maguerrawock Lake in township No. 5, now Calais, on his land. He was appointed September 3, 1793, Judge of the Norfolk Common Pleas and died December 29, 1829.

Oliver Everett was born in Dedham, June 11, 1752, and graduated at Harvard in 1779. He was ordained pastor of the new South Church in Boston in 1782, and in 1797 was appointed Judge of the Norfolk Common Pleas. He was the father of Edward and Alexander H. Everett.

Samuel Haven graduated at Harvard in 1789, and

was practicing in Dedham in 1794. He was appointed Judge of the Norfolk Common Pleas January 10, 1793, and died in 1847.

Moses Everett, brother of Oliver, was born in Dedham, July 15, 1750, and graduated at Harvard in 1771. He was Pastor of the Dorchester Church in 1774, and a Representative in 1794-5. He was appointed Judge of the Norfolk Common Pleas in 1803, and died March 25, 1813.

Thomas Boylston Adams graduated at Harvard in 1790, and was admitted to the Suffolk bar in 1795. He was appointed Chief Justice of the Norfolk Common Pleas June 28, 1811, and died in 1832.

Ephraim Spooner was a merchant in Plymouth, and was born in that town in 1735. He was the son of Thomas and Sarah (Nelson) Spooner, and died in 1818. He was appointed to the Plymouth County Court of Common Pleas, July 5, 1790.

Daniel Howard was of North Bridgewater.

Kilborn Whitman, son of Zechariah and Abigail (Kilborn) Whitman, was born in Bridgewater, August 17, 1765, and graduated at Harvard in 1785. He studied divinity with Rev. Dr. William Shaw of Marshfield, and was settled some time over the parish in Pembroke, Mass. After ten years' service in the ministry, he studied law with his brother Benjamin in Hanover, Mass., and was admitted to the Suffolk bar in 1791. He continued his residence in Pembroke until his death, and was County Attorney from 1811 to 1832. He was appointed to the Plymouth County Common Pleas May 10, 1810. He married Elizabeth, daughter of Isaac Winslow of Marshfield, and died December 11, 1835.

William Hammatt was son of Abraham and Lucy (Howland) Hammatt, and lived for a time in Nantucket, and was appointed in 1783 Judge of the Nantucket Common Pleas. He afterwards removed to Plymouth.

Walter Folger was born in Nantucket June 12, 1765, and for many years was a clock maker, and calculated and published an almanac for 1790. He studied medicine and law, practicing the latter in Massachusetts and Rhode Island, and was appointed in 1808 Chief Justice of the Nantucket Common Pleas. He was Representative, Senator, member of Congress from 1817 to 1821, and during the War of 1812 was among the earliest manufacturers of power looms in the country. He died September 5, 1849.

Thomas Crafts graduated at Harvard in 1785, and studied law with Christopher Gore. He was admitted to the Suffolk bar in 1788, and was appointed to the Suffolk Common Pleas July 9, 1793. He died in 1798.

George Richards Minot was born in Boston December 28, 1758, and graduated at Harvard in 1778. He was admitted to the Suffolk bar in 1781, was Clerk of the House of Representatives from 1782 to 1791, and Secretary of the Convention which adopted the Constitution. He was Judge of Probate for Suffolk County from 1792 until his death, and in 1800 was appointed Chief Justice of the Suffolk Common Pleas and in the same year a Judge of the "Municipal Court in the Town of Boston." He died in Boston January 2, 1802.

William Wetmore will be noticed as Judge of the Circuit Court of Common Pleas.

Shearjashub Bourne has already been noticed as a Barrister.

CIRCUIT COURT OF COMMON PLEAS.

Samuel Dana, son of Samuel Dana, was born in Groton, Mass., June 26, 1767, and practiced law in Charlestown. He was President of the Massachusetts Senate in 1807-8, and from 1811 to 1813 and member of Congress in 1814-15. He was Chief Justice of the Circuit

Court of Common Pleas for the Middle Circuit, and died in Charlestown November 20, 1825.

William Wetmore graduated at Harvard in 1770, and was a member of the Suffolk bar in 1781 and a Barrister in 1787. He was Associate Justice of the Circuit Court of Common Pleas for the Middle Circuit and died in 1830.

Stephen Minot, son of Jonas and Mary (Hall) Minot, was born in Concord, Mass., September 28, 1776, and graduated at Harvard in 1801. He studied law with Samuel Dana of Groton, and began practice in New Gloucester, Maine. He afterwards removed to Minot, Maine, and finally to Haverhill, Mass. He was appointed in 1811 Judge of the Circuit Court of Common Pleas for the Middle Circuit, and in 1824 was appointed County Attorney for Essex, and was a Representative in 1825. He married November 9, 1809, Rebecca, daughter of Samuel Trask of Bradford, Mass., and died at Haverhill April 6, 1861.

Nahum Mitchell, son of Cushing and Jannet (Orr) Mitchell, was born in East Bridgewater February 12, 1769, and graduated at Harvard in 1789. He studied law with Joshua Thomas of Plymouth and was admitted to the bar in Boston. He practiced law in East Bridgewater and among his students were Ezekiel Whitman, Chief Justice of the Supreme Court of Maine, and Elijah Hayward, Judge of the Supreme Court of Ohio. He was Representative from 1798 to 1803, and in 1809 and 1812, Senator in 1813, member of Congress from 1803 to 1805, one of the Commission in 1800 to establish the Massachusetts and Rhode Island line and in 1823 to establish the Connecticut line. He was Judge of the Circuit Court of Common Pleas for the Southern Circuit from 1811 to 1821 and the last two years Chief Justice. He published in 1840 a history of Bridgewater. He

married in 1794, Nabby, daughter of General Sylvanus Lazell of Bridgewater and died in Plymouth August 1, 1853.

John Thomas, son of General John and Hannah (Thomas) Thomas was born in Kingston, Mass., in 1766, and was appointed in 1811 Judge of the Circuit Court of Common Pleas for the Southern Circuit.

John Mason Williams will be noticed hereafter as Chief Justice of the Court of Common Pleas for the Commonwealth.

Thomas Boylston Adams, son of President John Adams, was born in that part of Braintree which is now Quincy, September 15, 1772, and graduated at Harvard in 1790. He was a Representative in 1805, and a Councillor in 1811. He was appointed in 1811 Chief Justice of the Circuit Court of Common Pleas for the Southern Circuit and died March 2, 1832.

Jairus Ware was born in Wrentham, Mass., January 22, 1772, and graduated at Brown in 1797. He practiced in Wrentham, was a Representative from 1809 to 1816 and from 1818 to 1823, a Councillor in 1825 and 1826, and in 1811 Justice of the Circuit Court of Common Pleas for the Southern Circuit. He was Clerk of the Courts for Norfolk County from 1826 to his death January 18, 1836.

Ebenezer Warren, son of Joseph and Mary Stevens Warren and brother of Dr. Joseph, killed at Bunker Hill, was born in Roxbury in 1749 and settled in Foxboro. He was appointed in 1793 Judge of the Norfolk Common Pleas and in 1814 was appointed Sessions Justice of the Circuit Court of Common Pleas for the Southern Circuit. He died in Foxboro, January 9, 1824.

Samuel Bass was born in Braintree, May 15, 1757, and was Representative, Selectman and Town Clerk, and in 1814, was appointed Judge of the Circuit Court of Common Pleas for the Southern Circuit.

Joseph Heath, son of General William Heath, was born in Roxbury, April 2, 1766. He was appointed Sessions Justice of the Circuit Court of Common Pleas in 1816, and died July 5, 1842.

Samuel Swett, son of Dr. John Barnard and Charlotte (Bourne) Swett, was born in Newburyport, June 9, 1782, and graduated at Harvard in 1800. He studied law with Jeremiah Smith in Exeter, and with Charles Jackson and Edward Livermore, and practicing in Salem from 1803 to 1810 removed to Boston. He was appointed Judge of the Circuit Court of Common Pleas for the Southern Circuit. He married, August 25, 1807, Lucia, daughter of William Gray, and died October 28, 1866.

Ezekiel Bacon, son of Rev. John Bacon, was born in Boston, September 1, 1776, and graduated at Yale in 1794, and in 1796 was a member of the Suffolk bar. He moved to Stockbridge, was Representative in 1805-6, and in 1813 was appointed Chief Justice of the Circuit Court of Common Pleas for the Western Circuit. From 1807 to 1813 he was member of Congress, and from 1813 to 1815 First Comptroller of the United States Treasury. He moved in 1816 to Utica, N. Y., and there died October 18, 1870.

Joseph Whiton was of Lee, and was appointed in 1814 Judge of the Circuit Court of Common Pleas for the Western Circuit.

Wolcott Hubbell was of Lanesboro, and was appointed in 1814, Judge of the Circuit Court of Common Pleas for the Western Circuit.

Elijah Paine was born in 1761, and practiced in Ashfield from 1793 until his death in 1846. He was a Judge of the Western Circuit of Common Pleas.

Edward Bangs was born in Hardwick, Mass., in 1756, and graduated at Harvard in 1777. He studied law

with Theophilus Parsons in Newburyport, and settled in Worcester. In 1805 he became a partner of Wm. E. Green, and in 1811 was appointed Judge of the Western Circuit Court of Common Pleas. He died in 1818.

Jonathan Leavitt has been noticed as Judge of the Hampshire County Court of Common Pleas.

THE BOSTON COURT OF COMMON PLEAS.

Harrison Gray Otis was son of Samuel Allyne Otis, and was born in Boston, October 8, 1765, and graduated at Harvard in 1783. He studied law with John Lowell and was admitted to the Suffolk bar in 1786. He was a Representative in 1796, member of Congress from 1797 to 1801, United States Attorney in 1801, Speaker of the Massachusetts House of Representatives from 1803 to 1805, President of the Senate from 1805 to 1811, and March 16, 1814 was appointed Judge of the Boston Court of Common Pleas. He was United States Senator from 1817 to 1822, Mayor of Boston from 1829 to 1834, and in 1814 a member of the Hartford Convention. He married Sally, daughter of William and Grace (Spear) Foster and died in Boston, October 28, 1848.

William Minot, son of George Richards Minot, was born in Boston, September 17, 1783, and graduated at Harvard in 1802. He studied law in Boston with Joseph Hall, and was admitted to the Suffolk bar in 1805. The city authorities placed in his hands in 1804 a fund bequeathed to the town by Benjamin Franklin with the view of encouraging young and meritorious mechanics, which he gratuitously administered for sixty years, during which it increased from four thousand to one hundred and twenty-five thousand dollars. He succeeded, March 2, 1818, Harrison Gray Otis as Judge of the Boston Court of Common Pleas, but after a month's

service resigned. He married Louisa, daughter of Daniel Davis, Solicitor General of the Commonwealth, and died in Boston, June 2, 1873.

William Prescott, son of Col. William Prescott, was born at Pepperell, Mass., August 19, 1762, and graduated at Harvard in 1783. He studied law with Nathan Dane of Beverly, and was admitted to the bar in 1787. He practiced first in Beverly and afterwards in Salem until 1808, when he removed to Boston. He was a Representative from Salem and Senator from Essex County. He was appointed April 21, 1818, to succeed William Minot as Judge of the Boston Court of Common Pleas. He served until May 11, 1819, when he resigned. He was a member of the Hartford Convention in 1814 and in 1820 a member of the State Constitutional Convention. He received the degree of LL. D. from Harvard in 1824, and died in Boston, December 8, 1844.

Artemas Ward, appointed May 11, 1819, Judge of the Boston Court of Common Pleas, will be noticed as Chief Justice of the Court of Common Pleas for the Commonwealth.

MUNICIPAL COURT IN THE TOWN OF BOSTON.

George Richards Minot has been noticed as Judge of the Suffolk County Court of Common Pleas.

Thomas Dawes has been noticed as Judge of the Supreme Judicial Court.

Josiah Quincy, son of Josiah and Abigail (Phillips) Quincy, was born in Boston, February 4, 1772, and graduated at Harvard in 1790. He studied law with William Tudor, and at a meeting of the Suffolk bar, held July 9, 1793, it was voted that he be "recommended to the Court of Common Pleas for the oath of an Attorney of that Court." He was a Senator in 1804, and member of Congress from 1805 to 1813. In a

speech delivered in Congress, January 4, 1811, against the admission of Louisiana as a State, he announced for the first time the doctrine of secession. He said: "I am compelled to declare it as my deliberate opinion that if this bill passes, the bonds of this Union are virtually dissolved; that the States which compose it are free from their moral obligations, and that as it will be the right of all, so it will be the duty of some, to prepare definitely for a departure, amicably if they can, violently if they must." He was again a Senator in 1814, serving until 1821. In 1821-22 he was Speaker of the House of Representatives, and on the 16th of January, 1822, he was appointed Judge of the Municipal Court in the town of Boston. He was a delegate to the State Constitutional Convention in 1820, and in 1823 resigned his seat on the bench. From 1823 to 1828 he was Mayor of Boston, and on the 15th of January, 1829, he was chosen President of Harvard College, and continued in office until 1845. He married, June 6, 1797, Eliza Susan, daughter of John Morton of New York, a descendant of George Morton who came to Plymouth in the Ann in 1623. He received the degree of A. M. from Yale in 1792, and LL. D. from Harvard in 1824, and died in Quincy, July 1, 1864.

Peter Oxenbridge Thacher, son of Rev. Peter Thacher, was born in Malden, December 22, 1776, and graduated at Harvard in 1796. He was admitted to the Suffolk bar in 1801, and May 14, 1823, was appointed Judge of the "Municipal Court in the Town of Boston," serving until his death in Boston, February 22, 1843.

SUPERIOR COURT OF THE COUNTY OF SUFFOLK.

Albert Hobart Nelson, son of Dr. John and Lucinda (Parkhurst) Nelson, was born in Milford, Mass., March 12, 1812, and graduated at Harvard in 1832.

He studied law with Samuel Hoar of Concord and at the Harvard Law School from which he graduated in 1837. He began practice in Concord but in 1842 moved to Woburn and opened an office in Boston. In 1846 he was appointed District Attorney for the Middlesex and Essex District, in 1855 was a member of the Council and in 1848-49 was a Senator. He was appointed, October 13, 1855, Chief Justice of the "Superior Court of the County of Suffolk," and resigned in 1858. He married in September, 1840, Elizabeth B., daughter of Elias Phinney of Lexington, Mass., and died at the McLean Asylum, June 27, 1858.

Josiah Gardner Abbott, son of Caleb and Mercy (Fletcher) Abbott, was born in Chelmsford, Mass., November 1, 1815, and graduated at Harvard in 1832. He studied law with Nathaniel Wright and Amos Spaulding in Lowell and at the Harvard Law School and was admitted to the bar in December, 1835. He began practice in Lowell as a partner with Mr. Spaulding and in 1840 formed a partnership with Samuel Appleton Brown. He was appointed October 13, 1855, Judge of the Superior Court of the County of Suffolk but resigned in 1858. After leaving the bench he opened an office in Boston and in 1860 he was offered a seat on the bench of the Supreme Judicial Court which he declined. In 1837 he was a Representative, in 1842-43 a Senator, in 1840 a member of the staff of Governor Marcus Morton, in 1853 a member of the Constitutional Convention, and in 1875-76 a member of Congress. He was also several times the Democratic candidate for Governor and United States Senator. He married July 18, 1838, Caroline, daughter of Edward St. Loe Livermore, Chief Justice of the Supreme Court of New Hampshire. He received the decree of LL. D. from Williams in 1862 and died in Boston, June 6, 1891.

Stephen G. Nash, son of John and Abigail (Gordon) Nash, was born in New Hampton, N. H., April 4, 1822, and graduated at Dartmouth in 1842. He studied law with George W. Nesmith in Franklin, N. H., and was admitted to the Suffolk bar April 16, 1846. He was a Representative from Boston and October 13, 1855, was appointed Judge of the Superior Court of the County of Suffolk. He married Mary Upton at Wakefield in 1866 and died in Lynnfield, Mass., May 2, 1894.

Charles Phelps Huntington, son of Rev. Dana and Elizabeth W. (Phelps) Huntington was born in Litchfield, Conn., May 24, 1802, and graduated at Harvard in 1822. He studied law at the Law School in Northampton and was admitted to the Hampshire bar. He began practice in Northampton, removed to Boston and October 13, 1855, was appointed Judge of the Superior Court of the County of Suffolk. He married, first, Helen Sophia Mills who died March 3, 1844, and second, January 2, 1847, Ellen, daughter of David Greenough. He died in Boston, January 30, 1868.

Marcus Morton, Jr., has been noticed as Chief Justice of the Supreme Judicial Court.

Charles Allen, Chief Justice of the Superior Court of the County of Suffolk, will be noticed as Chief Justice of the Superior Court for the Commonwealth.

BOSTON POLICE AND JUSTICE'S COURT.

Benjamin Whitman son of Zechariah and Abigail (Kilborn) Whitman was born in Bridgewater in 1768, and graduated at Brown in 1788. He established himself in Hanover, Mass., after his admission to the bar in Boston, but returned to Boston in 1805, from which town he was a Representative. He was appointed June 10, 1822, Chief Justice of the Boston Police Court, and died in Boston, August 31, 1840.

William Simmons was probably born in Scituate, about 1782, and graduated at Harvard in 1804. He was a member of the Suffolk bar certainly as early as 1811, and was appointed June 10, 1822, Judge of the Boston Police Court. He married in 1810, Lucia, daughter of Abraham Hammatt of Plymouth and died in Boston, June 17, 1843.

Henry Orne was admitted to the Suffolk bar in December, 1816, and was appointed June 10, 1822, Judge of the Boston Police Court.

John Gray Rogers was born in Boston and graduated at Harvard in 1814. He studied law with William Sullivan and was admitted to the Suffolk bar in October, 1817. He was appointed August 10, 1831, Judge of the Boston Police Court and remained on the bench until the Court was abolished May 29, 1866. He died in 1875.

James Cushing Merrill, son of Rev. Giles and Lucy (Cushing) Merrill, was born in Haverhill, Mass., September 27, 1784, and graduated at Harvard in 1807. He studied law with John Varnum of Haverhill, and was admitted to the Essex bar at Salem in September, 1812, and to the Suffolk bar in March, 1815. He was appointed, February 10, 1834, Judge of the Boston Police Court, and resigned in 1852. He was a Representative and Senator, and a Greek scholar of high attainments. He married, November 28, 1820, Anna, daughter of Dr. Nathaniel Saltonstall of Haverhill, and died in Boston, October 4, 1853.

Abel Cushing graduated at Brown in 1810, and studied law with Ebenezer Gay of Hingham. He was admitted to the Plymouth County bar, and settled in Dorchester where he continued in practice until June 30, 1843, when he was appointed one of the Justices of the Boston Police Court. He died in 1866.

Thomas Russell will be noticed as a Judge of the Superior Court for the Commonwealth.

Sebeus C. Maine was admitted to the Suffolk bar, February 3, 1845, and was appointed to the Boston Police Court, November 3, 1858. He died in Stoughton, April 25, 1887.

George Duncan Wells was born in Greenfield, Mass., and graduated at Williams in 1846. He graduated at the Harvard Law School in 1848, and practiced in Boston until his appointment to the bench of the Boston Police Court, May 31, 1859. He resigned his seat in the early part of the war and entered the service and died in Strasburg, Va., October 13, 1864.

Edwin Wright, son of Jesse and Philura (Fuller) Wright was born in North Coventry, Conn., March 7, 1821, and graduated at Yale in 1844. After teaching school for a time he studied law at the Harvard Law School and in the office of Benjamin F. Brooks in Boston, and was admitted to the Suffolk bar in January, 1850. He was a Representative from Boston in 1857 and 1867, and a member of the Boston School Board. On the 9th of July, 1861, he was appointed one of the Justices of the Boston Police Court, and served until the Court was abolished in 1866. He married October 29, 1850, Helen M., daughter of Paul Curtis of Boston, and died in Boston, January 21, 1899.

MUNICIPAL COURT OF THE CITY OF BOSTON.

John William Bacon, appointed Chief Justice July 2, 1866, will be noticed as a Judge of the Superior Court for the Commonwealth.

Francis William Hurd graduated at Harvard in 1852 and was admitted to the Suffolk bar October 2, 1855. He was appointed July 2, 1866, Associate Justice of the Municipal Court of the City of Boston, and

is now at the head of a commission on the revision of the laws.

Mellen Chamberlain, son of Moses and Mary (Foster) Chamberlain, was born in Pembroke, N. H., June 4, 1821, and graduated at Dartmouth in 1844. He graduated at the Harvard Law School in 1849 and began practice in Boston. He was a Representative in 1858-59 and Senator in 1863-64, and on the 29th of June, 1866, he was appointed Associate Justice of the Municipal Court of the city of Boston, and December 1, 1871, Chief Justice. In October, 1878, he was appointed Librarian of the Boston Public Library, and served until 1891, when he resigned. Since his resignation he has devoted himself to literary pursuits. He married, June 6, 1849, Martha Ann, daughter of Col. Jesse and Elizabeth (Merriam) Putnam of Danvers and died in Chelsea June 25, 1900.

Joseph McKean Churchill, son of Asaph and Mary (Gardner) Churchill, was born in Milton, Mass., April 29, 1821, and graduated at Harvard in 1840. He graduated at the Harvard Law School in 1845 and was admitted to the Suffolk bar in 1845. He was an Overseer of Harvard from 1856 to 1858, Representative in 1858-59, Councillor in 1860, member of the Constitutional Convention of 1853, Captain of Co. B, 45th Massachusetts Regiment in the war of 1861, and was appointed March 3, 1871, Associate Justice of the Municipal Court of the city of Boston. He married Augusta Phillips Gardner, and died in Milton, March 23, 1886.

William Ellison Parmenter, son of William and Mary (Parker) Parmenter, was born in Boston March 12, 1816, and graduated at Harvard in 1836. He studied law with John Mills, United States District Attorney at Boston, and at the Harvard Law School, and was admitted to the Suffolk bar April 1, 1842. He was ap-

pointed Associate Justice of the Municipal Court December 12, 1871, and Chief Justice January 24, 1883, and is still on the bench. He married Helen James of South Scituate, now Norwell, June 30, 1843.

John Wilder May was admitted to the Suffolk bar September 1, 1851, and was appointed Chief Justice of the Municipal Court October 12, 1878, and died in Dorchester, January 11, 1883.

William Josiah Forsaith, son of Josiah and Maria (Southworth) Forsaith was born in Newport, N. H., April 19, 1836, and graduated at Dartmouth in 1857. He studied law with Burke & Wait in Newport, and in Boston in the offices of Benjamin F. Hallett and Ranney & Morse, and was admitted to the Suffolk bar in 1860. He was appointed Special Justice of the Municipal Court of the city of Boston, January 23, 1872, and Associate Justice March 9, 1882, and is still on the bench. He married October 31, 1865, Annie Maria Veazie of Bangor, Maine.

Matthew James McCafferty was born in Ireland in 1829. He studied law in Lowell and was admitted to the Middlesex bar in March, 1857. He practiced first in Lowell, afterwards in Worcester and was appointed Judge of the Boston Municipal Court January 24, 1883. He died in Boston, May 5, 1885.

George Zaccheus Adams, son of Charles and Mary (Robbins) Adams was born in Chelmsford, Mass., April 23, 1833, and graduated at Harvard in 1856. He studied law in the office of Oliver Stevens in Boston and at the Harvard Law School and was admitted to the Suffolk bar, January 26, 1858. He was appointed August 4, 1882, Special Justice of the Boston Municipal Court and October 1, 1896, Associate Justice. He married September 16, 1861, Joanna F. daughter of Charles and Joan F. (Hagar) Davenport and is now on the bench.

John Henry Hardy, son of John and Hannah (Farley) Hardy was born in Hollis, N. H., February 2, 1847, and graduated at Dartmouth in 1870. He studied law at the Harvard Law School and in the office of Robert M. Morse of Boston and was admitted to the Suffolk bar in January, 1872. He associated himself in practice with George W. Morse of Boston and with Samuel J. Elder and Thomas W. Proctor, and June 3, 1885, was appointed Associate Justice of the Boston Municipal Court. He served in the war of 1861 and was a Representative from Arlington, Mass., in 1883. He married August 30, 1871, Anna J., daughter of Levi and Anna (Whitney) (Mead) Conant in Littleton.

Benjamin R. Curtis, son of Judge Benjamin R. Curtis, was born in Boston in June, 1855, and graduated at Harvard in 1875. He studied law at the Harvard Law School and in Boston in the office of Albert Mason and was admitted to the bar at Plymouth in June, 1878. In 1881 he was a lecturer in the Boston University Law School and April 28, 1886, was appointed Associate Justice of the Boston Municipal Court. He married in 1877 Mary G. daughter of Professor Horsford of Cambridge, and died in Boston, January 25, 1891.

Frederick D. Ely, son of Nathan and Amelia Maria (Partridge) Ely, was born in Wrentham, Mass., September 24, 1838, and graduated at Brown in 1859. He studied law in the office of Waldo Colburn of Dedham, and was admitted to the Norfolk bar in October, 1862. He was a Representative from Dedham in 1873, a Senator in 1878-79, and a member of the Forty-ninth Congress. He was appointed October 10, 1888, Associate Justice of the Municipal Court of the city of Boston and is now on the bench. He married, first, in Boston, December 6, 1866, Eliza, daughter of Seth and Harriet E. (Rice) Whittin, and second, at Dedham, August 10, 1885, Anna, daughter of Lyman and Olive Emerson.

John H. Burke, son of John and Mary Burke, was born in Chelsea, September 6, 1856. He was educated at the public schools and at Boston College and graduated at Boston University Law School in 1877. He afterwards studied in the office of Patrick A. Collins and was admitted to the Suffolk bar in October, 1878. He was appointed February 11, 1891, Associate Justice of the Municipal Court of the City of Boston and is now on the bench. He married Mary E. Ford of Boston.

John F. Brown was born in Douglas, Mass., March 20, 1848, and was admitted to the Suffolk bar in July, 1874. He was a Representative in 1887-88, and was appointed May 31, 1894, Associate Justice of the Municipal Court, serving still on the bench.

Henry Sweetser Dewey, son of Israel Otis and Susan Augusta (Sweetser) Dewey, was born in Hanover, N. H., November 9, 1856, and graduated at Dartmouth, in 1878. He studied law in the Boston University Law School and in the office of Ambrose A. Ranney in Boston, and was admitted to the Suffolk bar in June, 1882. He was a member of the Boston Common Council from 1885 to 1887, a Representative from 1889 to 1891, and was appointed October 9, 1896, Special Justice of the Municipal Court of the city of Boston and May 17, 1899, Associate Justice.

George Littlefield Wentworth, son of Stacy H. and Rebecca L. Wentworth, was born in Ellsworth, Maine, May 24, 1852, and studied law at the Boston University Law School. He was admitted to the Middlesex bar at Cambridge in October, 1881, and was appointed October 2, 1896, Special Justice of the Municipal Court of the city of Boston and May 17, 1899, Associate Justice. He is now on the bench.

John A. Bennett, son of Alvin W. and Mary Holman Bennett, was born in Wilbraham, Mass., October 23,

1848, and graduated at Amherst in 1873. He studied law at the Boston University Law School, and in the office of George S. Hillard of Boston, and was admitted to the Suffolk bar in June, 1876. He has been Public Administrator for Suffolk County, and May 26, 1899, was appointed Special Justice of the Municipal Court of the city of Boston, and is still serving. He married Julia R. Smith of South Hadley, December 25, 1877.

William Sullivan graduated at Harvard in 1878, and was admitted to the Suffolk bar in 1882. He was appointed, May 26, 1899, Special Justice of the Municipal Court of the city of Boston and is now on the bench.

Returning now from the digression into which this narrative has been led for the purpose of considering courts which more particularly concerned either the city of Boston or the county of Suffolk, it will be remembered that it has been stated that two Acts were passed July 3, 1782, establishing the Supreme Judicial Court and the County Courts of Common Pleas.

There was another Court called the Court of General Sessions of the Peace which had continued practically unchanged since May 31, 1699, which was reëstablished by an Act passed July 3, 1782. The Act provided that there shall be held in each County a Court of General Sessions of the Peace by the Justices of each County to hear and determine all matters relative to the conservation of the peace, cognizable by them at common law. An Act was passed June 19, 1807, providing that it should consist of one Chief Justice and a specified number of Associates for the several Counties who were to act as the General Court of Sessions, and on the 19th of June, 1809, the jurisdiction of the General Court of Sessions was transferred to the County Court of Common Pleas, and on the 25th of June, 1811, an Act was passed providing "that from and after the first day of September next, an

Act made and passed the 19th of June, 1809, entitled 'An Act to transfer the powers and duties of the Courts of Sessions to the Courts of Common Pleas' be and the same is hereby repealed, and that all Acts and parts of Acts relative to the Courts of Sessions which were in force at the time the Act was in force which is hereby repealed, be and the same are hereby revived from and after the said first day of September next."

On the 28th of February, 1814, it was enacted that the Act of June 25, 1811, reviving the Courts of Sessions, be repealed except so far as it relates to the counties of Suffolk, Nantucket and Dukes County, and that all petitions, recognizances, warrants, orders, certificates, reports and processes made to, taken from, or continued or returnable to the Courts of Sessions in the several counties, except as aforesaid, shall be returnable to and proceeded in and determined by the respective Circuit Courts of Common Pleas, which were established, as has already been stated, on the 21st of June, 1811. It further provided that from and after the first day of June next, the Circuit Courts of Common Pleas shall have, exercise and perform all powers, authorities and duties which the respective Courts of Sessions have, before the passage of the Act, exercised and performed, except in the counties of Suffolk, Nantucket and Dukes County.

The management of county affairs rested with the Circuit Courts of Common Pleas until February 20, 1819, when it was enacted that "from and after the first day of June next 'An Act to transfer the powers and duties of the Courts of Sessions to the Circuit Courts of Common Pleas' passed on the 28th of February, 1814, be hereby repealed. And it was further provided that from and after the first day of June next the Court of Sessions in the several counties shall be held by one

Chief Justice and two Associate Justices to be appointed by the Governor with the advice and consent of the Council, who shall have all the powers, rights and privileges, and be subject to all the duties which are now vested in the Circuit Courts of Common Pleas, relative to the erection and repairs of jails and other county buildings, the allowance and settlement of county accounts, the estimate, apportionment and issuing warrants for assessing county taxes, granting licenses, laying out, altering and discontinuing highways, and appointing committees and ordering juries for that purpose."

The Court of Sessions continued in the management of county affairs until March 4, 1826, when that part of its duties which related to highways was vested by law in a board called "Commissioners of Highways." This board was composed of five in each county, except Barnstable and Dukes County, in each of which it was composed of three, and Suffolk and Nantucket, in which there were none. The doings of the Commissioners were reported to the Court of Sessions for record.

On the 26th of February, 1828, an Act was passed providing "that the Act entitled 'An Act to establish Courts of Sessions,' passed on the 20th of February, 1819, also an Act entitled in addition thereto passed on the 21st of February, 1820; also an Act entitled, 'An Act increasing the numbers and extending the powers of Justices of the Courts of Sessions,' passed on the 6th of February, 1822; also an Act entitled 'An Act in addition to an Act directing the method of laying out highways,' passed on the 4th of March, 1826, be and the same are hereby repealed." The same Act provided for the appointment of County Commissioners, and the duties imposed on them are beyond the scope of a Judicial history.

The Judges of the General Sessions of the Peace and

of its successor, the Court of Sessions, in the various counties after its reorganization in 1807 were, as far as the writer has been able to discover them, as follows :

BARNSTABLE COUNTY.

John Davis, appointed 1807, Chief Justice, 1807; James Freeman, appointed 1807; John Freeman, appointed 1807; Nathaniel Freeman, appointed 1808, Chief Justice; Joseph Dimmock, appointed 1808; Samuel Freeman, appointed 1811; Isaiah L. Green, appointed 1811; Solomon Freeman, appointed 1811; Samuel P. Crowell, appointed 1819, Chief Justice, 1819; Elijah Cobb, appointed 1819; Elisha Doane, appointed 1819; Meletiah Bourne, appointed 1822, Special Justice; N. Crocker, appointed 1822, Special Justice.

BERKSHIRE COUNTY.

Nathaniel Bishop, appointed 1807, Chief Justice; Joshua Danforth, appointed 1807, Chief Justice, 1808; Adonijah Bidwell, appointed 1807; Samuel H. Wheeler, appointed 1807; Azariah Egleston, appointed 1808; William Towner, appointed 1808; William Walker, appointed 1811; Thomas Allen, appointed 1819, Chief Justice, 1819; Joseph Whiton, appointed 1819; Wolcott Hubbell, appointed 1819; William P. Walker, appointed 1820, Chief Justice, 1820; Moses Hopkins, appointed 1822; Special Justice; Douglas W. Sloane, appointed 1852, Special Justice.

BRISTOL COUNTY.

Josiah Dean, appointed 1807, Chief Justice; Nathl. Morton, Jr., appointed 1807; Elihu Slocum, appointed 1807; Daniel Perry, appointed 1807; Samuel Guild, appointed 1807; Jones Godfrey, appointed 1807; Seth Washburn, appointed 1811; Laban Wheaton, appointed

1819, Chief Justice; Apollos Tobey, appointed 1819; Jonathan Ingall, appointed 1822, Special Justice.

DUKES COUNTY.

Benjamin Bassett, appointed 1807, Chief Justice; John Davis, appointed 1807; Ichabod Norton, appointed 1807; Thomas Dunham, appointed 1810; Matthew Mayhew, appointed 1812, Chief Justice, 1812; William Davis, appointed 1826.

ESSEX COUNTY.

Nathan Dane, appointed 1807, Chief Justice; Thomas Kittridge, appointed 1807; Wm. Pearson, appointed 1807; John Punchard, appointed 1807; Josiah Smith, appointed 1807; Samuel Holten, appointed 1807, Chief Justice, 1807; Wm. Cleaveland, appointed 1808; Henry Atkins, appointed 1808; John Saunders, appointed 1808; Henry Elkins, appointed 1811; John Prince, Jr., appointed 1811; Joseph Fallon, 3d, appointed 1811; John Heard, appointed 1819, Chief Justice, 1819; Nehemiah Cleaveland, appointed 1819, Chief Justice, 1820; Lonson Nash, appointed 1820; Hobart Clark, appointed 1821; Robert Rantoul, appointed 1822; Stephen W. Marston, appointed 1822; John Merrill, appointed 1827; John Walsh, appointed 1827.

FRANKLIN COUNTY.

Job Goodale, appointed 1811, Chief Justice; Medad Alexander, appointed 1811, Chief Justice, 1812; Ebenezer Arms, appointed 1811; Caleb Hubbard, appointed 1811; Joshua Green, appointed 1811; Jerome Ripley, appointed 1812; Elijah Paine, appointed 1819; Asa Stebbins, appointed 1819; Elihu Hoyt, appointed 1822; John Nevens appointed 1825.

HAMPDEN COUNTY.

Samuel Fowler, appointed 1812, Chief Justice ; Gideon Burt, appointed 1812 ; Isaac Coit, appointed 1812 ; Joshua Frost, appointed 1812 ; Abel Bliss, Jr., appointed 1812 ; Samuel Lothrop, appointed 1813, Chief Justice, 1813 ; Abner Brown, appointed 1813 ; Sylvester Emmons, appointed 1813 ; Heman Day, appointed 1813 ; Ethan Ely, appointed 1814 ; William Ely, appointed 1814, Chief Justice, 1814 ; Stephen Pynchon, appointed 1819, Chief Justice, 1819 ; Thomas Day, appointed 1819 ; Jonathan Dwight, Jr., appointed 1822, Special Justice ; Elijah Bates, appointed 1822, Special Justice ; James Stebbins, appointed 1823, Chief Justice, 1823 ; James Fowler, appointed 1825 ; Joseph Forward, appointed 1826.

HAMPSHIRE COUNTY.

Solomon Smead, appointed 1807, Chief Justice, 1811 ; Medad Alexander, appointed 1808 ; Benjamin Smith, appointed 1808, Chief Justice, 1812 ; Jonathan Smith, Jr., appointed 1808 ; Martin Phelps, appointed 1808 ; Gideon Burt, appointed 1808 ; Erastus Lyman, appointed 1811 ; John Breck, appointed 1812 ; Levi Lyman, appointed 1812, Chief Justice, 1826 ; Henry Dwight, appointed 1812 ; Solomon Stoddard, appointed 1819, Chief Justice, 1819 ; Ezra Starkweather, appointed 1819 ; Samuel Porter, appointed 1819 ; Jonathan H. Lyman, appointed 1821, Chief Justice, 1821 ; Joseph Bridgman, appointed 1822 ; Thaddeus Clapp, appointed 1822, Special Justice ; Israel Billings, appointed 1822, Special Justice.

MIDDLESEX COUNTY.

Joseph B. Varnum, appointed 1807, Chief Justice ; Aaron Hill, appointed 1807 ; Amos Bond, appointed 1807 ;

Joseph Cordis, appointed 1807; Joseph Heald, 1807; John Kettell, appointed 1808; John Hart, appointed 1811; Ebenezer Hobbs, appointed 1812; Joseph Locke, appointed 1819, Chief Justice; Abiel Heywood, appointed 1819; Isaac Fiske, appointed 1819; Abner Bartlett, appointed 1822, Special Justice; Jacob Reeves, appointed 1822, Special Justice; John Walker, appointed 1814, Sessions Justice; Abiel Heywood, appointed 1814, Sessions Justice; Joseph Locke, appointed 1814, Sessions Justice; Loammi Baldwin, appointed 1814, Sessions Justice; Samuel P. P. Fay, appointed 1817, Sessions Justice; Isaac Fiske, appointed 1817, Sessions Justice.

NANTUCKET COUNTY.

Walter Folger, Jr., appointed 1807, Chief Justice; Francis Macey, appointed 1807; Daniel Coffin, appointed 1808; Josiah Barker, appointed 1815, Chief Justice; Benjamin Coffin, appointed 1815; Thaddeus Coffin, appointed 1816; Josiah Huzzey, appointed 1818; William Coffin, appointed 1819, Chief Justice; Zacheus Huzzey, appointed 1819.

Nantucket was not included in either of the circuits for Circuit Courts of Common Pleas and was excluded from the operation of the law establishing highway commissions. The management of its county affairs continued with the Court of General Sessions of the Peace and the Court of Sessions until the establishment of the Board of County Commissioners in 1828.

NORFOLK COUNTY.

Ebenezer Seaver, appointed 1806, Chief Justice; Wm. Aspinwall, appointed 1806; John Ellis, appointed 1806; Joseph Bemis, appointed 1806; Samuel Day, appointed 1806; John Ellis, Jr., appointed 1808, Chief Justice;

Nathaniel Ruggles, appointed 1808; Ebenezer Warren, appointed 1813; Jairus Ware, appointed 1819, Chief Justice; Samuel Swett, appointed 1819; Samuel P. Lord, appointed 1822; Lewis Fisher, appointed 1823, Special Justice; John Endicott, appointed 1823, Special Justice; William Ellis, appointed 1826, Chief Justice.

PLYMOUTH COUNTY.

Charles Turner, appointed 1807, Chief Justice; Henry Warren, appointed 1807; Nathan Willis, appointed 1807; Albert Smith, appointed 1807; Howard Carey, appointed 1808; Elisha Ruggles, appointed 1814; Joshua Thomas, appointed 1819, Chief Justice; John Thomas, appointed 1819; Nathaniel M. Davis, appointed 1821, Chief Justice; William Bourne, appointed 1822; Thomas Hobart, appointed 1822.

SUFFOLK COUNTY.

William Denison, appointed 1807, Chief Justice; David Tilden, appointed 1807; Russell Sturgis, appointed 1807; Samuel Clap, appointed 1807; Josiah Batchelder, appointed 1808; William Little, appointed 1812; Edward Jones, appointed 1812; William Smith, appointed 1814; Benjamin Rand, appointed 1819.

WORCESTER COUNTY.

Pliny Merrick, appointed 1807, Chief Justice; John Whitney, appointed 1807; John Spurr, appointed 1807; Abraham Lincoln, appointed 1807; Moses White, appointed 1807; Jonathan Davis, appointed 1808, Chief Justice, 1812; Edmund Cushing, appointed 1811; Joseph Adams, appointed 1811; Timothy Whiting, appointed 1811; Isaiah Thomas, appointed 1812; Oliver Crosby, appointed 1814; Seth Hastings, appointed 1819, Chief Justice; Benjamin Kimball, appointed 1819;

Aaron Tufts, appointed 1819 ; Jonas Kendall, appointed 1822 ; Jonas Sibley, appointed 1822.

It will be noticed that in the above lists certain persons are named as Sessions Judges. The explanation is that by the Act of February 28, 1814, repealing the Act reviving the Court of Sessions, the Governor was authorized to appoint two persons in each county to be Sessions Justices of the Circuit Court of Common Pleas and to sit with the Circuit Judges in the administration of all matters within their county, over which the Court of Sessions had previously had jurisdiction. While the Court of Sessions in the counties outside of Suffolk continued until February 26, 1828, the court in Suffolk County was abolished February 23, 1822, at the date of the incorporation of Boston as a city.

CHAPTER V.

COMMONWEALTH CONTINUED.

The experimental legislation concerning the courts below the Supreme Judicial Court which had continued during forty years after the adoption of the Constitution seems to have reached, in 1821, a partial solution of the problem which had puzzled the founders of our judicial system.

On the 14th of February, in that year, an Act was passed establishing the Court of Common Pleas for the Commonwealth and repealing the Acts establishing the Boston Court of Common Pleas and the Circuit Court of Common Pleas. It provided for the appointment of a Chief Justice and three Associate Justices with "original and exclusive jurisdiction of all civil actions arising or happening within the counties of said Commonwealth respectively, excepting such actions wherein the Supreme Judicial Court or where Justices of the Peace now have original jurisdiction; and shall also have jurisdiction of all such offences, crimes and misdemeanors as before the passing of this Act were cognizable by the Boston Court of Common Pleas and the respective Circuit Courts of Common Pleas; and shall also have appellate jurisdiction of all civil actions and of all crimes and offences where an appeal may now by law be made to the Boston Court of Common Pleas and the Circuit Courts of Common Pleas from the sentence or judgment of a Justice of the Peace." Provisions were made in the Act for the times of holding court, appeals to the Supreme Judicial

Court, the taking of exceptions, new trials and salaries. This court continued in existence until abolished by an Act passed April 5, 1859, establishing the present Superior Court. On the 1st of March, 1843, the number of Associate Justices was increased to four, on the 18th of March, 1845, to five, and on the 24th of May, 1851, to six.

The Judges of the Court at various times were as follows:

Artemas Ward, Chief Justice, appointed 1821; Solomon Strong, Associate, appointed 1821; John Mason Williams, Associate, appointed 1821, Chief Justice 1839; Samuel Howe, Associate, appointed 1821; David Cummins, Associate, appointed 1828; Charles Henry Warren, Associate, appointed 1839; Charles Allen, Associate, appointed 1842; Pliny Merrick, Associate, appointed 1843; Daniel Wells, Chief Justice, appointed 1844; Joshua Holyoke Ward, Associate, appointed 1844; Emory Washburn, Associate, appointed 1844; Luther Stearns Cushing, Associate, appointed 1844; Harrison Gray Otis Colby, Associate, appointed 1845; Charles Edward Forbes, Associate, appointed 1847; Edward Mellen, Associate, appointed 1847, Chief Justice 1854; George Tyler Bigelow, Associate, appointed 1848; Jonathan Coggsell Perkins, Associate, appointed 1848; Horatio Byington, Associate, appointed 1848; Thomas Hopkinson, Associate, appointed 1848; Ebenezer Rockwood Hoar, Associate, appointed 1849; Pliny Merrick, Associate, appointed 1850; Henry Walker Bishop, Associate, appointed 1851; George Nixon Briggs, Associate, appointed 1853; George Patridge Sanger, Associate, appointed 1854; Henry Morris, Associate, appointed 1855; David Aiken, Associate, appointed 1856.

Artemas Ward, the first Chief Justice of the above Court, was son of General Artemas Ward, and was

born in Shrewsbury, Mass., January 9, 1762, and graduated at Harvard in 1783. He practiced in Shrewsbury until 1809, when he removed to Boston. He was Representative, Councillor, member of Congress from 1813 to 1817, and Judge of the Boston Court of Common Pleas from May 11, 1819, to February 14, 1821, when that Court was abolished. He was appointed at that date Chief Justice of the Court of Common Pleas for the Commonwealth and resigned in 1839. He received the degree of LL. D. from Harvard in 1842 and died in Boston, October 7, 1847.

Solomon Strong, son of Judge Simeon Strong, was born in Amherst in 1780 and graduated at Williams. He was admitted to the bar in 1800 and practiced in Royalston, Athol, Westminster and Leominster. He was Representative and a member of Congress two terms. He was appointed in 1821 Judge of the Court of Common Pleas and resigned in 1842 and died in Leominster in 1850.

John Mason Williams, son of General James Williams, was born in New Bedford, June 24, 1780, and graduated at Brown in 1801. He was admitted to the Bristol County bar in 1803 and after practicing for a time in New Bedford removed to Taunton. He was a Judge of the Circuit Court of Common Pleas for the Southern Circuit, and in July, 1821, was appointed Associate Justice of the Common Pleas Court. In 1839 he was made Chief Justice and resigning in 1844 was appointed Commissioner of Insolvency. He received the degree of LL. D. from Brown in 1843 and from Harvard in 1845. He married Elizabeth Otis, daughter of Lemuel Williams and died in New Bedford, December 26, 1868.

Samuel Howe was appointed Judge of the Court of Common Pleas in 1821 and served until his death in

1828. He was County Attorney for Hampshire at the time of his appointment.

David Cummins, son of David and Mehitabel (Cave) Cummins, was born in Topsfield, August 14, 1785, and graduated at Dartmouth in 1806. He studied law with Samuel Putnam in Salem and was admitted to the Essex bar in September, 1809. He began practice in Salem, but removed to Springfield and finally to Dorchester and was appointed Judge of the Court of Common Pleas in 1828 and resigned in 1844. He married, first, August 13, 1812, Sally, daughter of Daniel and Sarah (Peabody) Porter, of Topsfield, and second, Catherine, daughter of Thomas Kittredge, of Andover. He died in Dorchester, March 30, 1855.

Charles Henry Warren, son of Henry and Mary (Winslow) Warren, was born in Plymouth, September 29, 1798, and graduated at Harvard in 1817. He studied law with Joshua Thomas in Plymouth, and Levi Lincoln in Worcester, and was admitted to the Plymouth bar. He settled in New Bedford, first as a law partner with Lemuel Williams and afterwards with Thomas Dawes Eliot, and from 1832 to 1839 was District Attorney for the five southern counties of Massachusetts. In 1839 he was appointed Judge of the Common Pleas Court and resigning in 1844 moved to Boston and associated himself with Augustus H. Fiske and Benjamin Rand. In 1846 he was chosen President of the Boston and Providence Railroad and resigned in 1867. In 1851 he was President of the Senate. The writer of this sketch was told by Judge Warren that as a Judge he took no notes, as a lawyer never had a brief, and as District Attorney never lost an indictment and only in two instances failed to convict. He married December 27, 1825, Abby, daughter of Barnabas Hedge, of Plymouth, and died in Plymouth, June 29, 1874.

Charles Allen, son of Joseph, was born in Worcester, August 9, 1797. He entered Yale College in 1811 and left at the end of one year, and shortly after entered the law office of Samuel M. Burnside and was admitted to the bar in 1818. He practiced in New Braintree six years, and in 1829, returning to Worcester, became a partner with John Davis. He was a Representative in 1829-1834-1836-1840, and Senator in 1835-38-39 and in 1842 was a member of the Northeastern Boundary Commission. In 1842 he was appointed Judge of the Common Pleas Court and resigned in 1844, in which year he became a member of Congress, serving until 1853. In 1858, on the resignation of Chief Justice Nelson of the Superior Court of Suffolk County, he was appointed his successor. The Court was abolished in 1859 by the Act establishing the Superior Court for the Commonwealth, and he was appointed in that year Chief Justice of the new Court. He resigned his seat in 1867, and died in Worcester, August 6, 1869.

Pliny Merrick has been already noticed as Judge of the Supreme Judicial Court.

Daniel Wells was born in Greenfield in 1792, and graduated at Dartmouth in 1810. In 1837, he was appointed District Attorney, and in 1844, Chief Justice of the Court of Common Pleas. In 1849, he moved to Cambridge and continued on the bench until his death, June 23, 1854.

Joshua Holyoke Ward was born in Salem in 1809, and graduated at Harvard in 1829. He studied law with Leverett Saltonstall in Salem, and was admitted to the Essex bar in 1832. He was appointed in 1844 Judge of the Common Pleas Court, and continued on the bench until his death in Salem, June 5, 1848.

Emory Washburn, son of Joseph, was born in Leicester, February 14, 1800, and graduated at Williams in

1817, receiving the degree of LL. D. from both Williams and Harvard in 1854. He studied law at the Harvard Law School, and was admitted to the Berkshire bar at Lenox in 1821. He practiced in Leicester until 1828, when he moved to Worcester and became a partner of John Davis. He was a Representative in 1826-27 and 1838, and Senator in 1841-42. He was appointed in 1844 Judge of the Court of Common Pleas, and resigned in 1847. He was chosen Governor in 1853, serving one year, and in 1856 was appointed Bussey Professor of Law at the Harvard Law School, which position he held until 1876. He was author of "Judicial History of Massachusetts," "History of Leicester," a "Treatise on the American Law of Real Property" and a "Treatise on the American Law of Easements and Servitudes." He died while serving as a Representative from Cambridge, March 18, 1877.

Luther Stearns Cushing was born in Lunenburg, Mass., June 22, 1803, and graduated at the Harvard Law School in 1826. He was admitted to the Middlesex bar in March, 1827, and was several years editor of "The Jurist and Law Magazine." From 1832 to 1843, he was Clerk of the House of Representatives and Representative in 1844. He was appointed in 1844, Judge of the Court of Common Pleas, and resigning in 1848 was appointed reporter of the decisions of the Supreme Judicial Court serving until 1853, and editing twelve volumes, beginning with the Suffolk and Nantucket term of 1848 and ending with the Suffolk term of November, 1853. He is widely known as the author of "A Manual of Parliamentary Practice," the "Elements of the Law and Practice of Legislative Assemblies" and "Rules of Proceeding and Debates in Deliberate Assemblies." He died in Boston, June 22, 1856.

Harrison Gray Otis Colby, son of Rev. Philip and

Harriet (Sewall) Colby, was born in Hallowell, Maine, in 1807, and graduated at Brown in 1827. He was admitted to the Bristol County bar and settled in Taunton, removing later to New Bedford where he married a daughter of John Avery Parker. In 1845 he was appointed Judge of the Court of Common Pleas and resigned in 1847. He died February 22, 1853.

Charles Edward Forbes has been noticed as Judge of the Supreme Judicial Court.

Edward Mellen was born in Westboro, Mass., in 1802, and graduated at Brown in 1823. He was admitted to the bar in 1828, and settled in Wayland. In 1847 he was appointed Judge of the Court of Common Pleas, and in 1854 Chief Justice. He remained on the bench until his court was abolished in 1859 when he settled in Worcester, and died in Wayland, May 31, 1875.

George Tyler Bigelow has been noticed as Chief Justice of the Supreme Judicial Court.

Jonathan Cogswell Perkins was born in Ipswich, Mass., November 21, 1809, and graduated at Amherst in 1832. He studied law at the Harvard Law School, and was admitted to the Essex bar in 1835. He was Senator in 1847, and in 1848 was appointed Judge of the Court of Common Pleas, remaining on the bench until the dissolution of that court in 1859. He edited several volumes of Pickering's Reports, with notes, Chitty's Criminal Law, Chitty on Contracts, Jarman on Wills, Abbot on Shipping, Daniel's Chancery Practice, Collyer on Partnership, and was the author of a treatise on Arbitrations and Awards. He died in Salem, December 12, 1877.

Horatio Byington, son of Isaiah, was born in Stockbridge, Mass., and studied law in Stockbridge and with Judge Howe in Worthington. He was admitted to the Berkshire bar in 1820, and beginning practice in Plain-

field, returned to Stockbridge and practiced there until he was appointed, in 1848, Judge of the Court of Common Pleas. He remained on the bench until his death at Stockbridge, February 5, 1856.

Thomas Hopkinson was born in New Sharon, Maine, August 25, 1804, and graduated at Harvard in 1830. He studied law with Lawrence & Glidden in Lowell, and was admitted to the Middlesex bar in 1833. He settled in Lowell, was Representative in 1838 and 1847, and Senator in 1845, and in 1848 was appointed Judge of the Court of Common Pleas. In 1849 he resigned, and was made President of the Boston and Worcester Railroad Company. He died in Cambridge, November 17, 1856.

Ebenezer Rockwood Hoar has been noticed as Judge of the Supreme Judicial Court.

Henry Walker Bishop was Register of Probate of Berkshire County from 1826 to 1851, and in the latter year was appointed Judge of the Court of Common Pleas. He died in Lenox, April 13, 1871.

George Nixon Briggs, son of Allen and Mary (Brown) Briggs, was born in Adams, Mass., April 12, 1796. After learning the hatter's trade, he studied law in Adams and was admitted to the Berkshire bar in October, 1818. He practiced in Adams, Lanesboro and Pittsfield, was Register of Deeds from 1824 to 1831, member of Congress from 1831 to 1843, Governor of Massachusetts from 1844 to 1850, and Judge of the Court of Common Pleas from 1853 until the dissolution of the court in 1859. He received the degree of LL. D. from Harvard in 1844, from Williams in 1844, and Amherst in 1845. He died September 12, 1861.

George Partridge Sanger, son of Rev. Ralph and Charlotte (Kingman) Sanger, was born in Dover, Mass., November 27, 1819, and graduated at Harvard in 1840.

He studied law at the Harvard Law School and while in the school was a tutor in Latin at Harvard. He was admitted to the Suffolk bar February 9, 1846, and after practicing as a partner first with Stephen H. Phillips and afterwards with Charles G. Davis, was appointed Assistant United States District Attorney in 1849. In January, 1853, he was appointed to the staff of Governor John H. Clifford, and on the 30th of September in that year was appointed Commonwealth or District Attorney. In 1854 he was appointed Judge of the Court of Common Pleas, and remained on the bench until the dissolution of the Court in 1859. In 1861 he was reappointed District Attorney, serving until his resignation in 1866. In 1873 he was appointed United States Attorney by President Grant and reappointed by Presidents Hayes and Arthur. He was a Representative in 1873 and was editor of the American Almanac from 1848 to 1860. He married, September 14, 1846, Elizabeth Sherburne, daughter of William Whipple and Eleanor (Sherburne) Thompson, of Portsmouth, N. H., and died at Swampscott, July 3, 1890.

Henry Morris, son of Oliver Bliss Morris, was born in Springfield, Mass., in 1814, and graduated at Amherst in 1832. He was admitted to the bar in 1835 and settled in Springfield. In 1855 he was appointed Judge of the Court of Common Pleas and served until the dissolution of the Court in 1859. He married Mary Wariner, May 16, 1837, and died in Springfield, June 4, 1888.

David Aiken, son of Phinehas and Elizabeth (Patterson) Aiken, was born in Bedford, N. H., June 7, 1804, and graduated at Dartmouth in 1830. He studied law in the offices of Bennett and Aiken in Manchester, Vt., and Wells & Alvord in Greenfield, Mass., and was admitted to the Franklin bar in August, 1833. Begin-

ning practice in Ashfield, he removed to Greenfield, where at various times he was associated with Henry Chapman, George Grinnell, George T. Davis, Charles Allen, Chester C. Conant, W. S. B. Hopkins and Charles E. Forbes. In 1856 he was appointed Judge of the Court of Common Pleas and served until the dissolution of that Court in 1859. In 1847 he was Senator. He married first at Greenfield, October 24, 1844, Lydia W., daughter of Spencer Root, and second in November, 1848, Mary Elizabeth, daughter of John S. Adams of Amherst. He died in Greenfield, April 13, 1895.

On the 5th of April, 1859, an Act was passed abolishing the Court of Common Pleas and establishing the Superior Court. The writer was at the time of the passage of the Act a member of the Senate and can say that General Benjamin F. Butler, a member if not Chairman of the Senate Judiciary Committee, was the father of the Act and engineered it through the Legislature. Precisely what motives actuated those most active in the establishment of the new court cannot be accurately estimated. It is, however, well known that there were some members of the legal profession who thought that the equipment of the old bench might be improved and that while a wholesale removal by address would be impracticable, the same result could be accomplished by a dissolution of the court. But it would be gross injustice to the incumbents of the Common Pleas bench to state or believe that the new court owed its origin to the weakness of the old. All of them were men of the highest character and had been recognized by the Governors appointing them as possessing marked legal attainments. One had been Governor of the Commonwealth and of the other six, five were graduates of either Amherst, Brown, Dartmouth or Harvard, and had established themselves successfully in practice. During

its career of forty-eight years the Common Pleas Court had been maintained at a high standard and with Ward, Williams, Warren, Allen, Merrick, Washburn, Bigelow and Hoar on its bench had fully met the demands of the community and the profession.

The Act establishing the Superior Court provided that all cases pending in the Superior Court of the county of Suffolk, the Court of Common Pleas and the Municipal Court of the city of Boston, all of which courts were abolished, and all actions at law and appeals in cases of insolvency now pending in the Supreme Judicial Court, wherein the debt or damage sought to be recovered on property claimed, if in the county of Suffolk does not exceed \$4,000, or if in any other county \$1,000, and all capital cases shall be transferred to and have day in the proper term of the Superior Court in the respective counties.

Appellate jurisdiction was given to the Court in all matters of insolvency determinable by the Courts of Probate and of insolvency, and in all other cases the same appellate jurisdiction as the Supreme Judicial Court, the Court of Common Pleas, the Superior Court of the county of Suffolk and the Municipal Court of the city of Boston had except where otherwise provided. It provided for the appointment of a Chief Justice and nine Associate Justices, for the times of holding the courts in the various counties and for the salaries of the Judges. It further provided that persons indicted for offences punishable by death or imprisonment for life shall be tried in the Superior Court by three Justices, and that no Justice shall hold in any one year more than three terms for the transaction of criminal business. It further provided for concurrent jurisdiction with the Supreme Judicial Court in all civil actions in which the damages demanded exceed in

amount \$4,000 in the county of Suffolk or \$1,000 in the other counties.

The Act of which the above is a synopsis was repealed by the General Statutes of 1860 and reenacted with the absolute repeal of some provisions and a modification of others. Among the provisions absolutely repealed was that which gave to the Superior Court jurisdiction in capital cases. That jurisdiction continued therefore with the Supreme Judicial and remained unchanged until 1891, when by Chapter 379 of the laws of that year, it was again given to the Superior Court. Among other transfers of jurisdiction from the Supreme Judicial Court to the Superior Court has been that in matters of divorce in 1887, and concurrent jurisdiction was given to it in 1891 in matters relating to telegraph and telephone wires, relating to the abuse by towns of corporate powers and relating to the contraction, alteration, maintenance and use of buildings and to the control of street railways.

The original Act provided for the appointment of one Chief Justice and nine Associate Justices. In 1875 the number of Associates was increased to ten, in 1886 to eleven, in 1888 to thirteen, in 1892 to fifteen and in 1896 to seventeen.

The following Judges have been appointed to its bench since its organization in 1859 :

Charles Allen, Chief Justice, appointed 1859 ; Julius Rockwell, Otis Phillips Lord, Marcus Morton and Ezra Wilkinson, Associates, who were all appointed 1859 ; Seth Ames, Associate, appointed 1859, Chief Justice, 1867 ; Henry Vose, Associate, appointed 1859 ; Thomas Russell, Associate, appointed 1859 ; John Phelps Putnam, Associate, appointed 1859 ; Lincoln Flagg Brigham, Associate, 1859, Chief Justice, 1869 ; Chester Isham Reed, Associate, appointed 1867 ; Charles

Devens, Associate, appointed 1867; Henry Austin Scudder, Associate, appointed 1869; Francis Henshaw Dewey, Associate, appointed 1869; Robert Carter Pitman, Associate, appointed 1869; John William Bacon, Associate, appointed 1871; William Allen, Associate, appointed 1872; Peleg Emory Aldrich, Associate, appointed 1873; Waldo Colburn, Associate, appointed 1875; William Sewall Gardner, Associate, appointed 1875; Hamilton Barclay Staples, Associate, appointed 1881; Marcus Perrin Knowlton, Associate, appointed 1881; Caleb Blodgett, Associate, appointed 1882; Albert Mason, Associate, appointed 1882, Chief Justice, 1890; James Madison Barker, Associate, appointed 1882; Charles Perkins Thompson, Associate, appointed 1885; John Wilkes Hammond, Associate, appointed 1886; Justin Dewey, Associate, appointed 1886; Edgar Jay Sherman, Associate, appointed 1887; John Lathrop, Associate, appointed 1888; James Robert Dunbar, Associate, appointed 1888; Robert Roberts Bishop, Associate, appointed 1888; Daniel Webster Bond, Associate, appointed 1890; Henry King Braley, Associate, appointed 1891; John Hopkins, Associate, appointed 1891; Elisha Burr Maynard, Associate, appointed 1891; Franklin Goodridge Fessenden, Associate, appointed 1891; John William Corcoran, Associate, appointed 1892; James Bailey Richardson, Associate, appointed 1892; Charles Sumner Lilley, Associate, appointed 1893; Henry Newton Sheldon, Associate, appointed 1894; Francis Almon Gaskell, Associate, appointed 1895; John Henry Hardy, Associate, appointed 1896; Henry Wardwell, Associate, appointed 1896; William Burnham Stevens, Associate, appointed 1898; Charles Upham Bell, Associate, appointed 1898; John Adams Aiken, Associate, appointed 1898; Frederick Lawton, Associate, appointed 1900.

Charles Allen, the first Chief Justice of the Superior Court, has been noticed as a Judge of the Court of Common Pleas.

Seth Ames has been noticed as Judge of the Supreme Judicial Court.

Julius Rockwell was born in Colebrook, Conn., April 26, 1805, and graduated at Yale in 1826. He studied law at the Yale Law School and with Swan & Sedgwick in Sharon, Conn., and was admitted to the bar in Litchfield, Conn., in 1829. He established himself in Pittsfield, Mass., in 1830, practicing alone until 1834, when he associated himself with James Denison Colt. He was a Representative from 1834 to 1837, and the last three years was Speaker of the House of Representatives. He was State Bank Commissioner from 1839 to 1841, and from 1844 to 1852 member of Congress. In 1854 he was appointed United States Senator for the unexpired term of Edward Everett, who had resigned, and in 1855 was the Republican candidate for Governor against Henry J. Gardner, the Know-Nothing candidate, and was defeated. In 1858 he was again Representative and Speaker, and in 1859 was appointed Judge of the Superior Court, holding office until his resignation in 1886. In 1865 he removed from Pittsfield to Lenox, where he died May 18, 1888.

Otis Phillips Lord has been noticed as a Judge of the Supreme Judicial Court.

Marcus Morton, Jr., has been noticed as Chief Justice of the Supreme Judicial Court.

Ezra Wilkinson was born in Attleboro, Mass., February 14, 1805, and graduated at Brown in 1824. He studied law with Peter Pratt in Providence and Josiah J. Fiske in Wrentham, Mass., and was admitted to the bar in Dedham in September, 1828. He practiced a short time in Freetown and Seekonk and removed to

Dedham in 1835. He was District Attorney from 1843 to 1855, Representative 1841-51-56, and a member of the Constitutional Convention in 1853. He was appointed in 1859 Judge of the Superior Court and continued on the bench until his death in Dedham, February 6, 1882.

Henry Vose, son of Elijah and Rebecca Gorham (Bartlett) Vose, was born in Charlestown, Mass., May 21, 1817, and graduated at Harvard in 1837. He studied law with George T. Davis in Greenfield, and with Chapman & Ashmun in Springfield and was admitted to the bar in Springfield. He was a Representative from Springfield in 1858 and in 1859 was appointed Judge of the Superior Court. He married October 19, 1842, Martha B. Ripley, of Concord, Mass., and died in Boston January 17, 1869, having sat on the bench until his death.

Thomas Russell, son of Thomas and May Ann (Goodwin) Russell, was born in Plymouth, Mass., September 26, 1825, and graduated at Harvard in 1845. He studied law with Whiting & Russell in Boston and was admitted to the Suffolk bar November 12, 1849. He was appointed Justice of the Police Court of Boston February 26, 1852, and in 1859 an Associate Justice of the Superior Court. He resigned in 1867 and was made Collector of the Port of Boston by President Grant, serving until after the re-election of President Grant, when he resigned and was appointed Minister to Venezuela. He married Nellie, daughter of Rev. Edward T. Taylor, of Boston, and died in that city February 9, 1887.

John Phelps Putnam was born in Hartford, Conn., March 21, 1817, and graduated at Yale in 1837. He graduated at the Harvard Law School in 1839 and was admitted to the Suffolk bar October 12, 1840. He set-

tled in Boston, being a Representative in 1851-2, and in 1859 was appointed Judge of the Superior Court. He remained on the bench until his death in Boston, January 4, 1882.

Lincoln Flagg Brigham, son of Lincoln and Lucy (Forbes) Brigham, was born in Cambridge, October 4, 1819, and graduated at Dartmouth in 1842. He studied law at the Harvard Law School and with John H. Clifford and Harrison G. O. Colby in New Bedford and was admitted to the Bristol bar in 1845. He was for a time a partner of Mr. Clifford and was District Attorney six years. In 1859 he was appointed Associate Justice of the Superior Court and in 1869 Chief Justice, serving until he resigned in 1890. He married at New Bedford, October 20, 1847, Eliza Endicott, daughter of Thomas and Sylvia (Perry) Swain, and died in Salem February 27, 1895.

Chester Isham Reed, son of William and Elizabeth Dean (Dennis) Reed, was born in Taunton, Mass., November 23, 1823, and received an honorary degree from Brown University in which he was for a time a student. He studied law with Anselm Bassett and in 1863 was chosen Attorney General, before which he was in 1859 a member of the Senate. He married, February 24, 1851, Elizabeth Y. Allyn, of New Bedford. He was appointed, in 1867, Judge of the Superior Court, resigning his seat in 1871. He died at White Sulphur Springs, W. Va., September 2, 1873.

Charles Devens, Jr., has already been noticed as Judge of the Supreme Judicial Court.

Henry Austin Scudder, son of Josiah and Hannah (Lovell) Scudder, was born in Barnstable, November 25, 1819. He studied law with his brother, Zeno, at Barnstable, and in Boston with George T. Bigelow, and was admitted to the Suffolk bar, October 25, 1844. He

was appointed in February, 1869, Judge of the Superior Court and resigned in 1872. He married, June 30, 1857, Mrs. Nannie B. Jackson, daughter of Capt. Charles B. Tobey, of Nantucket, and died at Washington, January 26, 1892.

Francis Henshaw Dewey, was born in Williamstown, Mass., in 1821, and graduated at Williams in 1840. He practiced in Worcester until he was appointed in 1869 Judge of the Superior Court. He resigned in 1881 and died in Worcester, December 16, 1887.

Robert Carter Pitman, son of Benjamin and Mary Ann (Carter) Pitman, was born in Newport, R. I., March 16, 1825, and graduated at the Wesleyan University, Middletown, Conn., in 1845, receiving the degree of LL. D. in 1869. He was admitted to the bar in New Bedford in 1848 where he practiced until 1869 when he was appointed Judge of the Superior Court. He was associated at different times as a partner with Thomas D. Eliot and Alanson Borden. He was a Representative in 1858, Senator in 1864-5, 1868-9 and the last year was President of the Senate. He married in New Bedford, August 15, 1855, Frances R., daughter of Rev. M. G. Thomas, and died in Newton, March 5, 1891, having continued on the bench until his death.

John William Bacon, was born in Natick, Mass., in 1818 and graduated at Harvard in 1843. He was admitted to the Middlesex bar in 1846 and practiced law in Natick fourteen years. He was a member of the Senate from 1859 to 1862 and July 2, 1866, he was appointed Chief Justice of the Municipal Court of the city of Boston. In 1871 he was appointed Judge of the Superior Court and died while holding Court at Taunton, March 21, 1888.

William Allen has been noticed as Judge of the Supreme Judicial Court.

Peleg Emory Aldrich was born in New Salem, July 24, 1813, and studied law at the Law School at Harvard. He was admitted to the bar in Richmond, Va., in 1845, and in 1846 at Worcester, after further pursuing his studies in the office of Chapman, Ashmun & Norton in Springfield. He first settled in Barre and in 1853 he was appointed District Attorney for the Middle District, serving until 1866. In 1854, he moved to Worcester and became associated with P. C. Bacon. In 1862, he was chosen Mayor of Worcester and was Representative in 1865-66. In 1873, he was appointed Judge of the Superior Court. He married Sarah, daughter of Harding P. Wood, of Barre, in 1850, and died in Worcester, March 14, 1895.

Waldo Colburn has been noticed as Judge of the Supreme Judicial Court.

William Sewall Gardner has been noticed as Judge of the Supreme Judicial Court.

Hamilton Barclay Staples, son of Welcome and Susan Staples, was born in Mendon, Mass., February 14, 1829 and graduated at Brown in 1851. He studied law in Providence and Worcester and was admitted to the Worcester bar in 1854. He practiced in Milford until 1869 and then moved to Worcester where he was associated with Francis P. Goulding until 1881, when he was appointed to the bench of the Superior Court. For eight years he was District Attorney of the Middle District and in 1884 he received the degree of LL. D. from Brown. He married Elizabeth A. Godfrey in Mendon, in 1858, and October 8, 1868, at Northampton, Mary Clinton, daughter of Charles A. Dewey, and died while on the bench in Milford, August 2, 1891.

Marcus Perrin Knowlton has been noticed as Judge of the Supreme Judicial Court.

Caleb Blodgett, son of Caleb and Charlotte (Piper)

Blodgett, was born in Dorchester, N. H., June 3, 1832, and graduated at Dartmouth in 1856. He studied law with Bacon & Aldrich in Worcester, and was admitted to the Worcester bar in February, 1860. He began practice in Hopkinton, but removed to Boston, where he was associated with Halsey J. Boardman until 1882, when he was appointed to the Superior Court bench, where he is still serving. He married, December 14, 1865, at Canaan, N. H., Roxie B., daughter of Jesse and Emily A. (Green) Martin.

Albert Mason, son of Albert T. and Arlina (Orcutt) Mason, was born in Middleboro, Mass., November 7, 1836, and after studying law in Plymouth was admitted to the Plymouth bar February 15, 1860. He enlisted as a private in one of two companies raised by William T. Davis for the 38th Regiment, and on the recommendation of Mr. Davis was commissioned Second Lieutenant of Company F in that regiment. He served until 1865 as Second Lieutenant, First Lieutenant, Captain and Assistant Quartermaster, and then resumed practice in Plymouth. At a later date he moved to Boston and in 1874 was appointed a member of the Board of Harbor Commissioners, and in 1882 a Judge of the Superior Court, of which he was made Chief Justice in 1890, which position he still holds. He married, November 25, 1857, Lydia F., daughter of Nathan and Experience (Finney) Whiting, of Plymouth.

James Madison Barker has been noticed as Judge of the Supreme Judicial Court.

Charles Perkins Thompson, son of Frederick M. and Susannah (Cheeseman) Thompson, was born in Braintree, Mass., July 30, 1827, and after studying law in the office of Benjamin F. Hallett in Boston, was admitted to the Suffolk bar in 1854. In 1857 he moved to Gloucester, from which place he was a Representa-

tive in 1871-2. From 1874 to 1876 he was a member of Congress, in 1877 received an honorary degree of Master of Arts from Amherst, and in 1880 and 1881 was the Democratic candidate for Governor of Massachusetts. He married, in 1861, Abbie Herrick of Gloucester. In 1885 he was appointed Judge of the Superior Court, and died while on the bench, in Gloucester, January 19, 1894.

John Wilkes Hammond has been noticed as Judge of the Supreme Judicial Court.

Justin Dewey, son of Justin and Melinda (Kelsey) Dewey, was born in Alford, Mass., June 12, 1836, and graduated at Williams in 1858. He studied law in the office of Increase Sumner of Great Barrington and was admitted to the Berkshire bar in November, 1860. He was a Representative in 1862 and 1877, and a Senator in 1879. In 1886 he was appointed Judge of the Superior Court and is now on the bench. He married, February 8, 1865, Jane, daughter of George and Clara (Wadhams) Stanley, of Great Barrington.

Edgar Jay Sherman, son of David and Fanny (Kendall) Sherman, was born in Weathersfield, Vt., November 28, 1834, and was admitted to the Essex bar in 1858. He settled in Lawrence, and was at different times associated with Daniel Saunders and with John K. Tarbox and Charles U. Bell. He was appointed Clerk of the Lawrence Police Court in 1859, and in 1862 entered the service as Captain in the 48th Massachusetts Regiment and was brevetted Major after the attack on Port Hudson, June 14, 1863. He was Representative in 1865, and in 1868 was chosen District Attorney for the Eastern District. In 1882 he was chosen Attorney General and served until 1887, when he was appointed Judge of the Superior Court, which position he still holds. He married Abbie Louise, daughter of Stephen

P. and Fanny B. Simmons, of Lawrence, November 24, 1858.

John Lathrop has been noticed as Judge of the Supreme Judicial Court.

James Robert Dunbar, son of Henry W. and Elizabeth (Richards) Dunbar, was born in Pittsfield, Mass., December 23, 1847, and graduated at Williams in 1871. He studied law at Harvard and in the office of Milton B. Whitney in Westfield, with whom he formed a partnership in 1874. He was in the Senate in 1885-86 and in 1888 he was appointed Judge of the Superior Court. He resigned his seat in 1898, and is now in practice in Boston. He married, May 15, 1875, at Westfield, Harriet P., daughter of George A. and Electa N. (Lincoln) Walton.

Robert Roberts Bishop, son of Jonathan Parker and Eliza Harding Bishop, was born in Medfield, Mass., March 31, 1834, and studied law at the Harvard Law School and in Boston, in the offices of Peleg W. Chandler and Brooks & Ball. He was admitted to the Suffolk bar November 24, 1857, and was a Representative in 1874, and a Senator from 1878 to 1882, the last three years of which he was President. He was the Republican candidate for Governor in 1882, and was appointed, March 7, 1888, Judge of the Superior Court, which place he still holds. He married, December 24, 1857, at Holliston, Mass., Mary Helen Bullard.

Daniel Webster Bond, son of Daniel Herrick and Deborah (White) Bond, was born in Canterbury, Conn., April 29, 1838, and was educated at the Plainfield Academy in Plainfield, Conn., and at the State Normal School in New Britain, Conn. He studied law in the Law School of Columbia College in New York and was admitted to the bar in 1862. He was District Attorney for the Northwestern Judicial District twelve years,

and was practicing law in Northampton when he was appointed Judge of the Superior Court in 1890.

Henry King Braley, son of Samuel T. and Mary A. Braley, was born in Rochester, Mass., March 17, 1850. He studied law in the office of Hosea Kingman, in Bridgewater, and was admitted to the bar in Plymouth, in October, 1873. He settled in Fall River, and continued in practice there until 1891, when he was appointed Judge of the Superior Court. He was City Solicitor in Fall River in 1874, and Mayor in 1882-83. He married in Bridgewater, April 29, 1875, Caroline W., daughter of Philander and Sarah T. Leach. He is still on the bench.

John Hopkins was born in Gloucester, England, in 1840 and graduated at Dartmouth in 1862. He was admitted to the Worcester bar in 1864 and practiced in Millbury and Worcester until his appointment in 1891 to the Superior Court bench, where he is still serving.

Elisha Burr Maynard, son of Walter and Hannah (Burr) Maynard, was born in Wilbraham, Mass., November 21, 1842, and graduated at Dartmouth in 1867. He studied law with George M. Stearns and Marcus P. Knowlton in Springfield and was admitted to the Hampden bar in 1868. He was a Representative in 1879, Mayor of Springfield in 1887-88, and was appointed in 1891 to the Superior Court bench. He married, August 25, 1870, Kate C., daughter of Calvin and Sarah (Townshend) Doty, of Springfield.

Franklin Goodridge Fessenden was born in Fitchburg, Mass., in 1849. He studied law in Greenfield and graduated at the Harvard Law School in 1872 and was admitted in that year to the Worcester bar. He was appointed in 1891 Judge of the Superior Court and is now on the bench.

John William Corcoran, son of James and Catharine

Corcoran, was born in Batavia, N. Y., June 14, 1853. He was educated at the public schools in Clinton, Mass., at St. Johns University, N. Y., and at the College of the Holy Cross in Worcester. He graduated at the Boston University Law School in 1875 and after admission in that year to the Worcester bar he began practice in Clinton, moving later to Boston. In 1890-91 he was the Democratic candidate for Lieutenant Governor and in 1892 was appointed Judge of the Superior Court, which position he resigned in 1893. He married Margaret J., daughter of Patrick and Mary McDonald, in Boston, April 28, 1881.

James Bailey Richardson, son of John, was born in Oxford, N. H., December 9, 1832, and graduated at Dartmouth in 1857. He studied law in Boston with Hutchins & Wheeler and was admitted to the Suffolk bar February 27, 1859. In 1884 he was appointed one of a commission to revise the charter of the city of Boston and in 1889 was appointed Corporation Counsel of Boston. He was appointed in 1892 Judge of the Superior Court and is now on the bench. He married, in 1865, Lucy Cushing, daughter of A. A. Gould, M. D.

Charles Sumner Lilley, son of Charles and Cynthia (Huntley) Lilley, was born in Lowell, December 13, 1851. He studied law in Lowell with Arthur P. Bonney and was admitted to the Middlesex bar at Cambridge in June, 1877. He settled in Lowell, was Chairman of the Board of Aldermen in 1879 and Senator in 1880-81-86. In 1884 he was a Councillor and in 1882-84 was the Democratic candidate for Congress in his district. In 1893 he was appointed Judge of the Superior Court and resigned in 1900. He married at Lowell, April 4, 1891, Clara, daughter of Arthur P. and Emma A. (Call) Bonney, of Lowell.

Henry Newton Sheldon was born in Waterville,

Maine, in 1843, and graduated at Harvard in 1863. He studied law with Josiah G. Abbott in Boston and was admitted to the Suffolk bar in April, 1866. In 1874 he associated himself in practice with Wilmon W. Blackmar, and in 1894 was appointed Judge of the Superior Court and is now on the bench.

Francis Almon Gaskill, son of Albert and Anna S. Gaskill, was born in Blackstone, Mass., January 3, 1846, and graduated at Brown in 1866. He studied law at the Harvard Law School and in the office of George F. Verry of Worcester, and was admitted to the Worcester bar March 3, 1869. He settled in Worcester. In 1883 he was appointed temporary District Attorney and in 1886 was chosen District Attorney, and in 1895 was appointed Judge of the Superior Court, which position he still holds. He married first at Providence, October 20, 1869, Katherine Mortimer, daughter of Anthony B. A. and Ann E. K. (Dean) Whitaker, and second at Lynn, July 12, 1892, Josephine L., daughter of Joseph J. and Phoebe (Lovejoy) Abbott.

John Henry Hardy has been noticed as Judge of the "Municipal Court of the City of Boston." He was appointed to the Superior Court, September 17, 1896.

Henry Wardwell, son of Moses and Amy Swasey (Farley) Wardwell, was born in Ipswich, Mass., April 28, 1840, and graduated at Dartmouth in 1866. He studied law with Henry W. Paine and Robert D. Smith of Boston and was admitted to the Suffolk bar August 1, 1870. He was a Representative in 1879-81, and was appointed in 1896 Judge of the Superior Court, which position he resigned in 1898. He married, October 6, 1875, Sarah Osborne Fitch, at Peabody.

William Burnham Stevens, son of William F. and Mary J. G. (Burnham) Stevens, was born in Stoneham, Mass., March 23, 1843, and graduated at Dartmouth in 1865.

He studied law at the Harvard Law School and in the office of Sweetser & Gardner in Boston, and was admitted to the Suffolk bar July 3, 1867. He was District Attorney for the Northern District from 1880 to 1890, and was appointed in 1898 Judge of the Superior Court and is now on the bench. He married, October 20, 1868, A. Josie Hill, and September 30, 1873, Mary W. Green.

Charles Upham Bell, son of James and Judith A. (Upham) Bell, was born in Exeter, N. H., February 26, 1843, and graduated at Bowdoin in 1863. He studied law with Charles H. Bell of Exeter and was admitted to the Rockingham County bar in 1866 and to the Essex bar in 1873. He settled in Lawrence and was appointed in 1898 Judge of the Superior Court. He married, first, Helen M., daughter of Joseph P. and Charlotte (Parker) Pitman, of Laconia, N. H., and, second, Elizabeth W., sister of his first wife.

John Adams Aiken was born in Greenfield, September 16, 1850, and graduated at Dartmouth in 1874. He was a Representative in 1883 and in 1898 was appointed Judge of the Superior Court.

Frederick Lawton, son of James and Sarah S. (Priest) Lawton, was born in Lowell, May 10, 1852, and graduated at Harvard in 1874. He studied law in the office of G. F. Lawton of Lowell and was admitted to the Middlesex bar at Lowell in 1880. He settled in Lowell, was Senator in 1893 and in 1900 was appointed Judge of the Superior Court. He married, at Lowell, June 15, 1880, Helen Spalding, daughter of Sewall G. Mack.

The only important court remaining to be considered is the Court of Probate concerning which as it has existed since the adoption of the constitution nothing has yet been said in this narrative. In both the Plymouth and Massachusetts colonies the probate of wills and the

administration of estates of deceased persons were for most of the time within the jurisdiction of the Assistants and county courts. This jurisdiction was disturbed during the brief administrations of President Dudley and Governor Andros but after the overthrow of Andros the old method was resumed and continued until the Province of Massachusetts Bay was chartered. As has already been stated the Province charter placed probate affairs in the hands of the Governor and Council who claimed the right to appoint Judges and Registers of Probate in the various counties. The names of those officers who administered probate affairs were given in the chapter on the provincial period of our judicial history.

On the 12th of March, 1784, an "Act for establishing Courts of Probate" was passed providing that a court shall be held in the several counties, and that a Judge and Register shall be appointed in each county and that the Supreme Judicial Court shall be the Supreme Court of Probate with appellate jurisdiction in all matters determinable by the Probate Judges.

Under this Act Judges and Registers of Probate were appointed until by an amendment of the Constitution ratified May 23, 1855, it was provided that in 1856 and every fifth year thereafter the Register should be chosen by the people of each county at the annual election for a term of five years. In 1856 a Court of Insolvency was established in each county with a Judge and Register and in 1858 the offices of both the Probate and Insolvency Courts were abolished and the offices of Judge and Register of Probate and Insolvency established, the Register to be chosen every fifth year by the people. In 1862 the Probate Court was made a Court of Record, and May 22, 1893, it was provided that a second Judge should be appointed in Suffolk

County. The Judges and Registers under the Constitution have been as follows :

BARNSTABLE COUNTY.

Judges of Probate : Daniel Davis, appointed 1780 ; Ebenezer Bacon, appointed 1799 ; John Davis, appointed 1800 ; Job C. Davis, appointed 1826 ; Nymphas Marston, appointed 1828 ; George Marston, appointed 1856.

Judge of Insolvency : Simeon N. Small, appointed 1856.

Judge of Probate and Insolvency : Joseph M. Day, appointed 1859 ; Hiram P. Harriman, appointed 1883.

Register of Probate, Nathaniel Freeman, appointed 1780 ; Abner Davis, appointed, 1824 ; Timothy Reed, appointed 1836 ; Nathaniel Hinckley, appointed 1853 ; George Marston, appointed, 1854 ; Rufus S. Pope, appointed 1856.

Registers of Insolvency : Jonathan Higgins, appointed 1856 ; Joseph M. Day, chosen 1857.

Judge of Probate and Insolvency : Jonathan Higgins, chosen 1859 ; Charles Thacher, Jr., chosen 1874 ; Freeman H. Lathrop, chosen 1882.

BERKSHIRE COUNTY.

Judges of Probate : Timothy Edwards, appointed 1781 ; Jahleel Woodbridge, appointed 1787 ; William Walker, appointed 1795 ; William P. Walker, appointed 1824 ; Daniel N. Dewey, appointed 1848.

Judge of Insolvency : Henry S. Briggs, appointed 1856.

Judge of Probate and Insolvency : James T. Robinson, 1859 ; Edward T. Slocum, appointed 1894.

Registers of Probate : William Walker, appointed 1781 ; Edward Edwards, appointed 1785 ; Nathaniel Bishop, appointed 1795 ; George Whitney, appointed 1823 ;

Henry W. Bishop, appointed 1826; Francis D. Farley, appointed 1851; John Branning, appointed 1851; Henry W. Taft, appointed 1853.

Register of Insolvency: James T. Robinson, appointed 1856.

Judge of Probate and Insolvency: Andrew J. Waterman, chosen 1859; Edward T. Slocum, chosen 1881; Frederick R. Shaw, chosen 1894.

BRISTOL COUNTY.

Judges of Probate: Benjamin Williams, appointed 1780; George Leonard, appointed 1785; Seth Padelford, appointed 1793; Hodijah Baylies, appointed 1811; Oliver Prescott, appointed 1836.

Judge of Insolvency: Joshua C. Stone, appointed 1856.

Judges of Probate and Insolvency: Edmund H. Bennett, appointed 1859; William E. Fuller, appointed 1884.

Registers of Probate: George Leonard, Jr., appointed 1780; William Baylies, appointed 1785; Francis Baylies, appointed 1812; David G. W. Cobb, appointed 1822; Anselm Bassett, appointed 1833; Henry Williams, appointed 1852; John Daggett, appointed 1854.

Register of Insolvency: Augustus L. West, appointed 1856.

Registers of Probate and Insolvency: John Daggett, chosen 1859; Austin S. Cushman, chosen 1866; William E. Fuller, chosen 1869; John H. Galligan, chosen 1885; Arthur M. Alger, chosen 1893.

DUKES COUNTY.

Judges of Probate: James Athearne, appointed 1780; George Athearne, appointed 1812; Thomas G. Mayhew, appointed 1838.

Judge of Insolvency: Leavitt Thaxter, appointed 1857.

Judges of Probate and Insolvency: Thomas G. Mayhew, appointed 1859; Joseph T. Pease, appointed 1874; Charles G. M. Dunham, appointed 1897.

Registers of Probate: Benjamin Smith, appointed 1780; Thomas Cooke, appointed 1781; Samuel Smith, appointed 1784; Cornelius Marchant, appointed 1821; Barnard C. Marchant, appointed 1840; Hebron Vincent, appointed 1853; Richard L. Pease, appointed 1854.

Register of Insolvency: Frederick E. Tirrill, appointed 1857.

Registers of Probate and Insolvency: Hebron Vincent, chosen 1858; Beriah T. Hillman, chosen 1891.

ESSEX COUNTY.

Judges of Probate: Benjamin Greenleaf, appointed 1781; Samuel Holten, appointed 1796; Daniel A. White, appointed 1815; Nathaniel S. Howe, appointed 1854.

Judge of Insolvency: Abner C. Goodell, appointed 1856.

Judges of Probate and Insolvency: George F. Choate, appointed 1859; Rollin E. Harmon, appointed 1889.

Registers of Probate: Daniel Noyes, appointed 1781; Nathaniel Lord, 3d, appointed 1815; Edwin Lawrence, appointed 1852; George R. Lord, appointed 1854; James Ropes, appointed 1856; Jonathan Perley, Jr., appointed 1857; Charles H. Hudson, appointed 1857.

Registers of Probate and Insolvency: Abner C. Goodell, chosen 1859; Jeremiah T. Mahoney, chosen 1878.

FRANKLIN COUNTY.

Judges of Probate: Samuel Smead, appointed 1811; Jonathan Leavitt, appointed 1812; Richard E. Newcomb, appointed 1821; George Grinnell, appointed 1849;

Horatio G. Parker, appointed 1853; Franklin Ripley, appointed 1854.

Judges of Probate and Insolvency: Charles Mattoon, appointed 1858; Chester C. Conant, appointed 1870; Francis M. Thompson, appointed 1899.

Registers of Probate: Isaac B. Barber, appointed 1811; George Grinnell, Jr., appointed 1841; Wendell T. Davis, appointed 1849; Samuel O. Lamb, appointed 1851; Charles Mattoon, appointed 1853; Charles Mattoon, chosen 1856.

Registers of Probate and Insolvency: Charles J. Ingersoll, chosen 1858; Chester C. Conant, chosen 1863; Francis M. Thompson, chosen 1870; Francis N. Thompson, chosen 1899.

HAMPDEN COUNTY.

Judges of Probate: Samuel Fowler, appointed 1812; John Hooker, appointed 1813; Oliver B. Morris, appointed 1829.

Judge of Insolvency: John M. Stebbins, appointed 1856.

Judges of Probate and Insolvency: John Wells, appointed 1858; William S. Shurtleff, appointed 1863; Charles L. Long, appointed 1896.

Registers of Probate: William Blair, appointed 1812; Oliver B. Morris, appointed 1813; Justin Willard, appointed 1829; William L. Smith, appointed 1851; Henry Smith, appointed 1853; Charles A. Winchester, chosen 1855; Charles R. Ladd, chosen 1857.

Register of Insolvency: William S. Shurtleff, chosen 1857.

Registers of Probate and Insolvency: William S. Shurtleff, chosen 1859; Samuel B. Spooner, chosen 1863.

HAMPSHIRE COUNTY.

Judges of Probate: Eleazer Porter, appointed 1781;

Samuel Henshaw, 1797; Jonathan Leavitt, 1809; Joseph Lyman, 1810; Samuel Hinckley, 1811; Ithamar Conkey, 1834.

Judge of Insol.: Horace I. Hodge, 1856.

Judges of Prob. and Insol.: Samuel F. Lyman, 1858; Samuel T. Spaulding, 1873; William G. Bassett, 1878.

Reg. of Prob.: John Chester Williams, 1781; Samuel Hinckley, 1787; Isaac C. Bates, 1816; Samuel P. Lyman, 1827; A. Perry Peck, 1855.

Reg. of Insol.: R. B. Hubbard, chosen 1856.

Reg. of Prob. and Insol.: Luke Lyman, 1858; Hubbard M. Abbott, 1883.

MIDDLESEX COUNTY.

Judges of Prob.: Oliver Prescott, 1780; James Prescott, 1805; Samuel P. P. Fay, 1821; William A. Richardson, 1856.

Judge of Insol.: Luther J. Fletcher, 1857.

Judges of Prob. and Insol.: William A. Richardson, 1858; George M. Brooks, 1872; Charles J. McIntire, 1894; George F. Lawton, 1894.

Reg. of Prob.: James Winthrop, 1780; James Foster, 1817; Isaac Fiske, 1817; Alonzo V. Lynde, 1851; Alfred A. Prescott, 1853.

Reg. of Insol.: Joseph H. Tyler, 1856.

Reg. of Prob. and Insol.: Joseph H. Tyler, 1858; Isaac F. Jones, 1859; Samuel H. Folsom, 1877.

NANTUCKET COUNTY.

Judges of Prob.: Jethro Huzzey, 1789; Isaac Coffin, 1808; Samuel Mitchell, 1843.

Judge of Insol.: Edward M. Gardner, 1856.

Judges of Prob. and Insol.: Samuel Mitchell, 1859; James M. Bunker, 1872; Thaddeus C. Defriez, 1873.

Reg. of Prob.: Abner Coffin, 1791; Josiah Barker, Jr.,

1802 ; Josiah Huzzey, 1818 ; Jonathan T. Barney, 1825 ; Timothy Huzzey, 1825 ; George Cobb, 1837 ; William Barker, 1853 ; George Cobb, 1854.

Reg. of Insol. : George Cobb, 1856.

Reg. of Prob. and Insol. : William Barney, 1858 ; Thaddeus C. Defriez, 1868 ; Samuel Swain, 1873 ; Benjamin F. Brown, 1888 ; Henry Riddell, 1893.

NORFOLK COUNTY.

Judges of Prob. : William Heath, 1793 ; Edward H. Robbins, 1814 ; Sherman Leland, 1830 ; William Sherman Leland, 1853.

Judge of Insol : Francis Hilliard, 1856.

Judges of Probate and Insolvency : George White, appointed 1858 ; James H. Flint, appointed 1898.

Registers of Probate : Samuel Haven, appointed 1793 ; Jonathan H. Cobb, appointed 1833.

Register of Insolvency : Erastus Worthington, chosen 1856.

Register of Probate and Insolvency : Jonathan H. Cobb, chosen 1858 ; Jonathan Cobb, chosen 1878.

PLYMOUTH COUNTY.

Judges of Prob. : Joseph Cushing, 1778 ; Joshua Thomas, 1793 ; Wilkes Wood, 1821 ; Aaron Hobart, 1844.

Judge of Insol. : David Perkins, 1856.

Judges of Prob. and Insol. : Wm. H. Wood, 1858 ; Jesse E. Keith, 1884 ; Benjamin W. Harris, 1890.

Reg. of Prob. : Isaac Lothrop, 1776 ; Beza Hayward, 1809 ; Jacob H. Loud, 1831 ; Moses Bates, 1852 ; Joseph H. Beal, 1853 ; Samuel H. Doten, 1857.

Reg. of Prob. and Insol. : Daniel E. Damon, 1858 ; Edward E. Hobart, 1883 ; John C. Sullivan, 1888.

Reg. of Insol. : Nathan King, 1856.

SUFFOLK COUNTY.

Judges of Probate: Oliver Wendell, appointed 1780; James Sullivan, appointed 1788; Thomas Dawes, appointed 1790; George Richards Minot, appointed 1792; Thomas Dawes, Jr., appointed 1802; Joseph Hall, appointed 1825; John Heard, appointed 1836; Willard Phillips, appointed 1839; Edward Greeley Loring, appointed 1847; John P. Putnam, appointed 1858.

Judge of Insolvency: Isaac Ames, appointed 1856.

Judges of Probate and Insolvency: Isaac Ames, appointed 1858; John W. McKim, appointed 1877; Robert Grant, appointed 1893.

Registers of Probate: William Cooper, held over from 1776; Perkins Nichols, appointed 1799; John Heard, appointed 1806; David Everett, appointed 1811; John Heard, appointed 1812; Oliver B. Peabody, appointed 1836; Horatio M. Willis, appointed 1842; Thomas Gill, appointed 1852; Horatio M. Willis, appointed 1853; William C. Browne, 1855.

Register of Insolvency: Charles W. Storey, chosen 1856.

Registers of Probate and Insolvency: William C. Browne, chosen 1858; William S. King, chosen 1870; Patrick R. Guiney, chosen 1871; Elijah George, chosen 1882.

WORCESTER COUNTY.

Judges of Probate: Artemas Ward, appointed 1781; Joseph Dorr, appointed 1783; Nathaniel Paine, appointed 1801; Ira M. Barton, appointed 1836; Benjamin F. Thomas, appointed 1844; Thomas Kinnicutt, appointed 1848; Dwight Foster, appointed 1857.

Judge of Insolvency: Alexander H. Bullock, appointed 1856; William W. Rice, appointed 1856.

Judges of Probate and Insolvency: Henry Chapin,

appointed 1858; Adin Thayer, appointed 1878; William T. Forbes, appointed 1888.

Register of Probate: Theophilus Wheeler, appointed 1793; C. G. Prentiss, chosen 1837.

Register of Probate and Insolvency: John J. Piper, chosen 1858; Charles E. Stevens, chosen 1868; Frederick W. Southwick, chosen 1883; George H. Harlow, chosen 1893.

In the probate history of the Commonwealth there have occurred three removals of Judges, one by impeachment and two by address. There has been but one instance of removal of a Judge in the other courts, that of Theophilus Bradbury, who was removed in 1803 by address from the bench of the Supreme Judicial Court. Judge Bradbury, a highly esteemed and honorable official, was stricken with paralysis in February, 1802, and wholly disabled. In July, 1803, after more than a year of disability, he was removed in the only manner known to the Constitution. Of the three Judges of Probate, James Prescott of Middlesex County was impeached in 1821, and Edward Greeley Loring was removed by address in 1858, and the removals of both were noted. The trial of Judge Prescott began on the 6th of February, 1821 and continued until the 27th of April, and many of the persons associated with it as Senators, Managers and Council were men of ability and distinction. Among the Senators who acted as Judges were J. B. Varnum, William Gray, John Mason Williams, Peter C. Brooks, John Wells, Dudley L. Pickman, Jonathan Dwight, William Sullivan, Robert Rantoul and Ebenezer Moseley. The Managers on the part of the house were John G. King, Levi Lincoln, whose place was taken by Horatio G. Newcomb, William Baylies, Warren Dutton, Samuel P. P. Fay, Lemuel Shaw and Sherman Leland. The

Counsel for Judge Prescott were Samuel Hoar, Daniel Webster, William Prescott, George Blake, Samuel Hubbard and Augustus Peabody, an array of legal ability never before or since gathered at any trial in Massachusetts. The articles of impeachment, fifteen in number, included for the most part charges of indiscretion in accepting fees and acting as an adviser in cases pending in his own court. On three of these articles he was found guilty and removed from office.

The removal by address of Judge Loring was the result of no irregularity in the administration of his official duties, but was based on the ground that holding the office of Judge of Probate was incompatible with holding the office of United States Commissioner, both of which had been held by him for some years. As United States Commissioner he had heard an application for the rendition of Anthony Burns, a fugitive slave, to his alleged master, and rendered judgment in accordance with the application. After this act a pressing and continued demand had been made on the Legislature for his removal. His removal was attempted at various times on the ground that he was continuing in office in violation of the provisions of section 13, chapter 459 of the Laws of 1855, which declared "that no person who holds any office under the laws of the United States which qualifies him to issue any warrant or other process, or to grant any certificate under the Acts of Congress passed in 1793 and 1850, or to serve the same, shall at the same time hold any office of honor, trust or emolument under the laws of the Commonwealth." Resolves in favor of his removal on the ground of his violation of this law had been defeated several times, either by a vote of the Legislature or by executive veto on the declared ground that the law of 1855 was unconstitutional.

When a renewed attempt was made to remove him in 1858, the writer, then a member of the Senate, was chairman of the special committee to whom the petitions for removal were referred. The late Joseph M. Churchill was chairman on the part of the House, in which branch the petitions had been presented, and he was requested by the committee to draft a report in favor of the passage of an address. The writer, believing that a removal would never be accomplished on the grounds that had been successfully attacked, and believing also that the report of the House chairman would repeat those grounds, wrote of his own volition a report with reasons for removal which would not only avoid question of constitutionality, but would also commend themselves to the minds of those whose anti-slavery sentiments were not pronounced.

At the next meeting of the committee, finding that the report of Mr. Churchill was what the writer expected, he asked permission after it had been read to read his own, which was at once accepted by a majority of the committee. In order that the reasons which finally secured the favorable action of the Legislature and the Executive may be fully understood, the report is made a part of this narrative.

“HOUSE OF REPRESENTATIVES, March 9, 1858.

“The joint special committee to whom were referred the several petitions for the removal of Edward Greeley Loring from the office of Judge of Probate for the County of Suffolk, have considered the same and report.

“The Constitution provides that ‘all judicial officers duly appointed, commissioned and sworn, shall hold their offices during good behavior excepting such concerning whom there is a different provision made in the Constitution ; provided, nevertheless, the Governor with

the consent of the Council may remove them upon the address of both houses of the Legislature.' The exercise of this right in the hands of the Governor and Council and the two branches of the Legislature is unrestricted. Any reasons, unless they may be such as are based on misconduct and maladministration in office, which may seem sufficient, will justify removal by address.

"In the year 1840, Edward Greeley Loring, was appointed Commissioner of the United States to take bail and affidavits pursuant to the Acts of Congress passed in 1812 and 1817. In 1846 he was appointed Judge of Probate for the County of Suffolk. At that time under the Act of Congress of 1793, jurisdiction in all cases of the extradition of fugitives from service or labor was vested in any Magistrate of a county, city or town corporate. The duties imposed on a Commissioner in 1840, though enlarged by Acts of Congress subsequently were of such a character that perhaps no valid reason existed why the offices of Judge of Probate, and Commissioner of the United States should not be held and their separate functions discharged by one and the same person.

"But by the Act of Congress passed in 1850, the jurisdiction in question was transferred to the Commissioners of the United States, and in the language of that Act Edward Greeley Loring, as one of the Commissioners, was 'required to exercise and discharge all the powers and duties conferred by this Act.' This transfer increased the duties and responsibility of the Commissioners and so changed their character that the holding of that office became in the opinion of your Committee incompatible with the holding of the office of Judge of Probate; that a faithful discharge of the duties of the one became inconsistent with the proper discharge in all cases of the duties of the other.

“A single illustration will suggest the conflict which might arise in the exercise of the powers and duties imposed by the two offices. A slave mother dies in Massachusetts and her children are brought before the Court of Probate for the appointment of a guardian. The Judge of Probate by the laws of Massachusetts is for the time their protector and friend, and while the hearing is pending the same Judge in his capacity as Commissioner is called upon to issue a warrant for their seizure as the property of a Southern slave owner.

“Again the Constitution provides that ‘the Judges of Probate of wills and for granting letters of administration shall hold their Courts at such place or places on fixed days as the convenience of the people shall require, and the Legislature shall from time to time hereafter appoint such times and places.’ These times and places have been fixed by the Legislature agreeable to the wants and convenience of the people.

“It must be apparent that the assumption or occupation by any Judge of Probate of any office whose duties might interfere with the discharge of his probate duties at the times and places thus constitutionally prescribed is improper and after due notice is a sufficient cause of removal. It cannot be denied that a judicial office under the laws of the United States whose duties are compulsory upon the incumbent may be incompatible with a judicial office under the laws of Massachusetts whose duties are no less compulsory. Now no limit is to be presumed to the amount of duties which a Commissioner may be called upon to perform. If the discharge of the duties of Commissioners were voluntary under the Act of 1850, the mere occupation of the office might be unobjectionable, but in the language of Judge Loring in his protest in 1855, ‘the duty of Commissioners of the Circuit Court of the United States under the law of

1850 is imperative upon them ' and ' an application made pursuant to law to any one Commissioner fixes that duty on him and after such application he can neither decline it nor evade it.' It is clear then that even if such applications were rare they might be made at the very time fixed by the law for the performance of his probate duties, and if numerous they might prevent their performance altogether. The fact that during the trial of Anthony Burns such a conflict existed as compelled Judge Loring in the discharge of duties as Commissioner to adjourn the Court of Probate and postpone its business, sufficiently confirms the incompatibility in question.

" But the duties of Commissioners in connection with the extradition of fugitive slaves are not the only duties which might conflict with the proper discharge of the duties of Judge of Probate. Pursuant to several Acts of Congress passed subsequently to the appointment of Judge Loring as Commissioner in 1840, he is liable to be called on to act in cases of extradition of fugitives from foreign countries, and issue warrants and hold preliminary examinations in cases of revolts, mutiny and affrays on shipboard, and a great variety of crimes and offences committed on sea and land within the jurisdiction of the United States. These duties enlarging from year to year aid still further in constituting the office of United States Commissioner such an office as cannot with propriety be held by a judicial officer under the laws of Massachusetts. When we add to this interference of official duties, their opposite and conflicting natures, the incompatibility is the more manifest.

" This incompatibility has been long since recognized by the laws of the Commonwealth and by the members of successive Legislatures. The law of 1843, though

applicable to magistrates of this Commonwealth in the performance of the duties imposed upon them by the Act of Congress of 1793, was clearly indicative of the determination of the people of Massachusetts that no magistrate in judicial office should participate in the extradition of slaves. The sentiment and spirit of that law are as clearly violated whether that participation is had by a magistrate of Massachusetts as such acting under the law of 1793, or by a Commissioner of the United States, acting under the law of 1850, who is at the same time a judicial officer under the laws of the Commonwealth. In conformity with the spirit of this law the Legislature declared by Resolves in 1850 'that the sentiments of the people of Massachusetts as expressed in their legal enactments in relation to the delivering up of fugitive slaves remain unchanged,' and 'that the people of Massachusetts, in the maintenance of these their well known and invincible principles, expect that their officers and representatives will adhere to them at all times, on all occasions and under all circumstances.'

"The law of 1855 in a more positive manner recognizes the same principle and applies it to the condition of things existing in consequence of the law of Congress passed in 1850. In direct contravention of the terms and spirit of this law, Judge Loring now holds the two offices of Judge of Probate and United States Commissioner. Indeed the whole current of sentiment and law in Massachusetts during the last fifteen years has enunciated the principle that no officers of this Commonwealth shall engage in the extradition of or occupy any office among whose duties such extradition may be counted. The same doctrine has been endorsed and confirmed by the address of two Legislatures to the Governor of the Commonwealth for the removal of the Judge who has disregarded and violated it.

“For these reasons in the opinion of the committee the Legislature is called upon to address the Governor to remove Edward Greeley Loring from the office of Judge of Probate for the county of Suffolk. They do not feel obliged to base their grounds for his removal upon the law of 1855, and indeed to establish the entire validity of these grounds, in their opinion, it is not necessary to regard that law, except so far as it is declaratory of the sentiment of the people. If that law is constitutional, it is sufficient to say that its violation is a valid reason for the address. If it is unconstitutional, they hold that the principle so long acknowledged which dictated its enactment is also abundant cause and justification.

“Ample notice has been given to Judge Loring of the wishes of the people as expressed through their representatives and ample time afforded him to respect and yield to them. While Judge of Probate he still holds the office of United States Commissioner in defiance of the sentiment of the Commonwealth and his removal by address is the only remedy which the Constitution recognizes or provides.

“Your committee respectfully recommend that the accompanying address be sent to the Governor requesting him, with the consent of the Council, to remove Edward Greeley Loring from the office of Judge of Probate for the County of Suffolk.

“And your committee further recommend that a joint committee of two on the part of the Senate and five on the part of the House be appointed to present said address to the Governor.”

The address was adopted by the Legislature and presented by a committee, of which the writer was chairman, to Nathaniel P. Banks, then Governor, who, with the consent of the Council, promptly caused the removal.

The report was signed by William T. Davis and Joseph W. Cornell on the part of the Senate, and Joseph M. Churchill, Dexter F. Parker, George Stevens and W. F. Arnold on the part of the House. William Page, the only other member of the committee, made a minority report in opposition to the address, and Messrs. Churchill, Arnold, Parker and Cornell reported that while they concurred in the report, they favored the removal for the additional reason "that the said Edward Greeley Loring, in violation of the provisions of the 13th Section of Chapter 459 of the Acts of 1855, holds the office of Judge of Probate for the County of Suffolk, and also the office of United States Commissioner, with power to issue process and grant certificates under the Act of Congress approved September 18, A. D. 1850, known as the Fugitive Slave Act."

In an earlier part of this narrative the names and short sketches were given of the Attorney Generals and Solicitor Generals down to the Revolution.

So far as the office of Solicitor General is concerned, it is only necessary to say that it ceased to exist for a time after the Revolution, and was revived by an Act passed March 4, 1800, which provided for the appointment of a Solicitor General after the first of July in that year. On the 17th of June an Act was passed fixing his salary when appointed, and Daniel Davis was appointed January 20, 1802, and served until the office was abolished in 1832. Though in practice the Solicitor General seems to have had charge of the criminal business, and the Attorney General the civil, the Act of March 4, 1801, provided "that at any time after the first of July a Solicitor General may be appointed to do and perform similar duties with the Attorney General."

Mr. Davis was born in Barnstable, May 8, 1762, and after studying law with Shearjashub Bourne was ad-

mitted to the bar in 1782. He settled in Falmouth, now Portland, and was one of five lawyers practicing at that time in the District of Maine, the others being George Thacher, Roland Cushing, Timothy Langdon and William Lithgow. He served six years in the Senate, six years in the House, was from 1796 to 1801 United States Attorney for the District of Maine, and in January, 1802, was appointed Solicitor General. In 1804 he removed to Boston, and after his retirement had his residence in Cambridge, where he died October 27, 1835. With regard to the termination of the office of Solicitor General, who had charge of the criminal business of the Commonwealth, while the Attorney General had charge of its civil business, a singular act was passed in 1821. The office of Solicitor General was originally established in 1767 more for the purpose of giving a position to Jonathan Sewall than of meeting a public necessity. It had existed many years as an unnecessary running mate with that of Attorney General, and the Legislature began to realize that the two offices were more than the public business required. The incumbents were two excellent men, highly esteemed by the people, Mr. Davis, who held one office about twenty years, and Perez Morton, who had held the other since 1810. The Legislature desiring to abolish one of the offices, but reluctant to make what might appear to be an invidious distinction, provided by the Act above referred to, "that whenever the office of Attorney General or Solicitor General shall be vacant by death, resignation or otherwise, the salary annexed to the office which shall first so become vacant as aforesaid, shall thenceforth cease and determine." But as neither death nor resignation came to the aid of the Legislature, it passed an Act in 1832 abolishing the office of Solicitor General.

The Attorney Generals since the Revolution have been as follows :

Robert Treat Paine was appointed during the Revolution and held over until 1790, when on the 12th of February in that year James Sullivan was appointed. Barnabas Bidwell succeeded on the 15th of June, 1807, Perez Morton on the 7th of September, 1810, and James T. Austin, May 24, 1832. Mr. Austin held office until the office was abolished in 1843. In 1849 the office was revived, and in that year John H. Clifford was appointed and succeeded by Rufus Choate January 22, 1853, and John H. Clifford again May 20, 1854. By the 17th Article of Amendments to the Constitution adopted by the General Court during the sessions of 1854 and 1855, and ratified by the people May 23, 1855, the office of Attorney General was made elective, and in 1858 Stephen Henry Phillips was chosen, succeeded by Dwight Foster in 1861, Chester I. Reed in 1864, Charles Allen in 1867, Charles R. Train in 1872, George Marston in 1879, Edgar J. Sherman in 1883, Andrew J. Waterman in 1887, Albert E. Pillsbury in 1891, and Hosea M. Knowlton, the present incumbent, in 1893.

When the office was abolished in 1843 by chapter 186 of the Laws of 1843, the Act provided that the Commonwealth's Attorney for the county of Suffolk should have charge of capital trials in that county, and the District Attorneys of those in their respective districts, while the Commonwealth's Attorney should have charge of business in which the State had an interest.

Robert Treat Paine, the first Attorney General under the Constitution, has been noticed as a Judge of the Supreme Judicial Court.

James Sullivan has been noticed as a Judge of the Superior Court of Judicature.

Barnabas Bidwell was a Stockbridge man and was

admitted to the Berkshire bar in 1790. He was County Treasurer in 1791, Senator from 1801 to 1804 and member of Congress from 1803 to 1806. He was appointed Attorney General in 1807 and resigned August 30, 1810. He died in Kingston, Canada, July 27, 1833.

Perez Morton, son of Joseph and Amiah (Bullock) Morton, was born in Plymouth October 22, 1750, and graduated at Harvard in 1771. He was an attorney of Suffolk county in 1779, and a Barrister in 1786. He was appointed Attorney General September 7, 1810, and held office until May 24, 1832. He died in 1837.

James Trecothick Austin, son of Jonathan Loring and Hannah (Ivers) Austin, was born in Boston January 10, 1784, and graduated at Harvard in 1802. He studied law with William Sullivan and was admitted to the Suffolk bar in July, 1805. In 1807 he was appointed Attorney for the State in Suffolk county and in 1809 Town Advocate. In 1816 he was appointed by Madison to manage the business under the 41st article of the treaty of Ghent and in 1825-26 and 1831 he was a member of the Senate. He was appointed Attorney General in 1832 and served until that office was abolished in 1843. In 1831 he delivered the Phi Beta oration at Harvard and in 1835 received the degree of LL. D. from his alma mater. He married, October 2, 1806, Catharine, daughter of Elbridge Gerry, and died in Boston, May 8, 1870.

John Henry Clifford was born in Providence, January 16, 1809, and graduated at Brown in 1827. He studied law with Theron Metcalf in Dedham and after admission to the bar settled in New Bedford. In 1839 he was a Representative and in 1849 was appointed to the office of Attorney General which was revived in that year. While in office he was prosecuting officer in the capital trial of John W. Webster and in 1852

was chosen Governor, serving one year. In 1854 he was again appointed Attorney General and served until 1858 when the office became elective. In 1862 he was President of the Senate and was for several years President of the Board of Overseers of Harvard University, from which institution he received the degree of LL. D. in 1853. He received the same degree from Brown in 1849 and Amherst in 1853. He married a daughter of William H. Allen of New Bedford and died January 2, 1876.

Rufus Choate, son of David and Miriam (Foster) Choate, was born in the town of Essex, Mass., October 1, 1799, and graduated at Dartmouth in 1819. He studied law at the Harvard Law School and in the office of William Wirt in Washington, and was admitted to the Essex bar in Salem in 1823 and began practice in Danvers. In 1828 he removed to Salem. While in Danvers he was a Representative in 1825 and Senator in 1827. From 1831 to 1834 he was a member of Congress and in the latter year removed to Boston. In 1841 he succeeded Daniel Webster in the United States Senate and served while Mr. Webster, who had left the Senate, acted as Secretary of State under Harrison. In 1845, Mr. Webster returned to the Senate and Mr. Choate resumed practice in Boston. In 1850 he visited Europe and in 1853 accepted the post of Attorney General, resigning in 1854. In 1853 he was a member of the State Constitutional Convention and in 1858 in consequence of ill health abandoned professional labor. In 1859 he started for Europe but was obliged to leave the steamer at Halifax and died in that city July 13, 1859. He married March 29, 1825, Helen, daughter of Mills Olcott, of Hanover, N. H.

Stephen Henry Phillips, son of Stephen C. and Jane (Appleton) Phillips, was born in Salem August 16, 1823,

and graduated at Harvard in 1842. He graduated at the Harvard Law School in 1844 and was admitted to the Suffolk bar February 6, 1846. He was District Attorney of Essex from 1851 to 1853, and Attorney General elective from 1858 to 1861. In 1866 he went to Honolulu and was Attorney General of the Hawaiian Islands from 1866 to 1873 and Minister of Foreign Affairs. On his return he practiced for a time in San Francisco and afterwards in Boston and Salem. He married, October 3, 1871, Margaret, daughter of James H. and Mary (Willis) Duncan, of Haverhill, and died in Salem, April 8, 1897.

Dwight Foster, was born in Worcester, in 1828, and graduated at Yale in 1848. He was admitted to the Worcester bar in 1849 and practiced in Worcester and Boston. He was Attorney General from 1861 to 1864 and Judge of the Supreme Judicial Court from 1866 until his resignation in 1869. He died in 1884.

Chester Isham Reed has been noticed as a Judge of the Superior Court.

Charles Allen has been noticed as a Judge of the Supreme Judicial Court.

Charles Russell Train, son of Rev. Charles and Hep-sibah (Harrington) Train, was born in Framingham, Mass., October 18, 1817, and graduated at Brown in 1837. He read law in Cambridge and was admitted to the Suffolk bar in 1841. He settled in Framingham, was Representative in 1847, member of the Constitutional Convention in 1853, District Attorney from 1848 to 1855, Councillor in 1857-8, and member of Congress from 1859 to 1863. About the close of the war, he removed to Boston, was a Representative again in 1871 and Attorney General from 1872 to 1879. He died at North Conway, N. H., July 29, 1885.

George Marston, son of Charles and Nancy C. (Good-

speed) Marston, was born in Marston's Mills, Barnstable, October 15, 1821, and studied law with his uncle, Nymphas Marston, and after spending one or more terms at the Harvard Law School was admitted to the Barnstable County bar in September, 1845. He established himself in Barnstable where he remained until 1869, when he removed to New Bedford. In 1853 he was appointed Register of Probate, and in 1854, Judge of Probate, serving until 1858. From 1859 to 1878 he was District Attorney, and in the latter year was chosen Attorney General, remaining in office until 1883, the year he died. He married Elizabeth Weston, daughter of Oliver C. Swift of Falmouth, Mass., and died in New Bedford, August 14, 1883.

Edgar Jay Sherman has been noticed as a Judge of the Superior Court.

Andrew J. Waterman, son of William and Sarah (Bucklin) Waterman, was born in North Adams, Mass., June 23, 1825, and after studying law in the offices of Keyes Danforth and Daniel N. Dewey, in Williamstown, was admitted to the Berkshire bar, March 18, 1854. In 1855, he was appointed Register of Probate, and in 1858, was chosen Register of Probate and Insolvency, serving until 1880, when he was appointed District Attorney to fill a vacancy. He was afterwards annually chosen to the latter office until his resignation in 1887, when he was chosen Attorney General, and served three years. He married Ellen Douglas, daughter of Henry H. and Nancy (Comstock) Cooke, at East Boston, January 7, 1858.

Albert E. Pillsbury, son of Josiah Webster and Elizabeth (Dinsmoor) Pillsbury, was born in Milford, N. H., August 19, 1849, and entered at Harvard in 1867, leaving in his Sophomore year to go to Sterling, Ill., where he studied law in the office of his uncle, James Dins-

moor, an eminent lawyer of that town. In 1870, he came to Boston, and was admitted to the Suffolk bar in June of that year. He was a Representative in 1876-77 and '78, and Senator in 1884-85 and '86, the last two years President of the Senate. In 1888 he was offered a seat on the bench of the Superior Court, and in 1889, the position of Corporation Counsel of the city of Boston. In 1890 he was chosen Attorney General, and served three years. It is a commentary on the present unsatisfactory condition of political parties that only the honest workings of his mind leading him to honest convictions have thus far obstructed his path to higher honors. He married at Newbury, Vt., July 9, 1889, Louise F. (Johnson) Wheeler, daughter of Edward C. and Delia M. (Smith) Johnson.

Hosea M. Knowlton was born in Durham, Maine, May 20, 1847, and graduated at Tufts College in 1867. He studied law at the Harvard Law School and in the office of Edward L. Barney of New Bedford, and was admitted to the bar in June, 1870. Practicing first in Boston, he removed in 1872 to New Bedford and was a partner of Mr. Barney until 1879, when he became associated with Arthur E. Perry. He was a Representative in 1876, and Senator in 1878 and 1879. In the latter year he was appointed District Attorney to fill a vacancy occasioned by the resignation of George Marston, who had been chosen Attorney General. In 1893 he was chosen Attorney General, and is still in office.

It is not proposed to include in this narrative sketches of the United States Courts within the Commonwealth, as they are beyond the scope of a Judicial History of Massachusetts. Nor is it the intention of the writer to follow the currents of those minor courts which at various times, either in the hands of Justices of the Peace or

Trial Justices or District Courts, have administered justice at the threshold of our judicial system. These District Courts, with their congeners, the Police and Municipal Courts, in the several Districts and the cities and larger towns, as they exist to-day, may all be found in the Manual of the General Court. It may, however, be well to add that on the 27th of March, 1858, an Act was passed providing for the appointment by the Governor of "a suitable number of Justices of the Peace as Trial Justices" not exceeding the number in each county specified in the Act with a Jurisdiction described in the Act, and that in the various Acts establishing District Courts the Trial Justices within the Court Districts lost their jurisdiction.

Though not strictly germane to our narrative, a few closing words concerning the Massachusetts bar during the colonial and provincial days and the days of the Commonwealth may not be inappropriate. It has been stated that the Act establishing the Supreme Judicial Court, passed July 3, 1782, gave the Court authority to regulate the admission of attorneys and the creation of barristers at law. A law passed November 4, 1705, prescribing the oath to be taken by attorneys, appears to have furnished for many years the only necessary regulation. There was practically no bar during the colonial period. It is possible that John Winthrop, Richard Bellingham, John Humphrey, Herbert Pelham, Simon Bradstreet and Thomas Lechford were educated in the law, but Pelham and Lechford returned to England after a few years' residence in Massachusetts. The skill with which the colony laws were drafted indicates something more than the ordinary learning of men engaged in commercial pursuits. The real practitioners in the courts in the colonial days were not lawyers. They were such men as John West, a crea-

ture of Andros, George Farwell, another creature of Andros, both of whom came from New York ; John Coggan, a merchant ; Amos Richardson, a tailor ; John Watson, a merchant, and Benjamin Bullivant, an apothecary. In fact, the business of practicing in the courts was looked upon with such disfavor that a law was passed by the Massachusetts Colony General Court in 1662 excluding every one "who was a usual and common attorney in an Inferior Court from a seat in the House of Deputies." Edward Randolph, Secretary of the Massachusetts Colony under President Dudley, wrote home to England in January, 1687-8, "I have wrote you of the want we have of two or three honest attorneys (if any such thing in nature). We have but two ; one is West's creature—came with him from New York and drives all before him. He also takes extravagant fees, and for want of more the country cannot avoid coming to him, so that we had better be quite without them than not to have more."

It was largely the custom for parties to manage their own suits, and litigation became so easy, and trials so tedious, that the General Court in 1656 ordered "that when any plaintiff or defendant shall plead by himself or his attorney for a longer time than one hour, the party that is sentenced or condemned shall pay twenty shillings for every hour so pleading more than the common fees appointed by the Court for the entrance of action to be added to the execution for the use of the country."

Under Andros the courts were authorized to make rules for the regulation of court proceedings, and a table of court fees was established, a copy of which, taken from Washburn's *Judicial History*, is as follows :

For Commissioners of small causes, attachments or summons, 1s.

Subpœna for witnesses, 3*d*.

Entry, 3*s*. 4*d*.

Filing papers, each paper, 2*d*.

Judgment, 6*d*.

Confessing judgment, 1*s*.

Execution, 2*s*.

Marshal's fees on every verdict, 1*s*.

Each Justice per diem paid out of the fines, 5*s*.

In civil actions, entry, 5*s*.

Jury on verdict not less than, 6*s*. 6*d*.

Entering and approving bonds, 2*s*.

Superior Court jury, verdict not less than, 6*s*. 6*d*.

Entry of action, 10*s*.

Confessing judgment, 2*s*.

Additional entry fee if over £20, 10*s*.

Entry of judgment, 2*s*.

Marshal's fee in every verdict, 1*s*.

Governor and Council, entry of appeals, 2*s*. 6*d*.

Entry of Action, £1.

In the early days of the Province, attorneys were recognized as officers of the court. In 1708 a law was passed prohibiting parties from employing more than two attorneys and no attorney was permitted to refuse his services provided he were tendered the legal fee. At a little later period the office of court practitioner became more respected when it began to be occupied by men of legal education. Men thoroughly instructed in the law at either the Inner Temple, Middle Temple, Lincoln's Inn or Gray's Inn began to migrate to New England and some of Massachusetts nativity like Benjamin Lynde were sent to England and fitted for the profession at one of the above schools of law. Ministers and physicians were no longer called to the bench and men like Samuel Sewall whose narrow and bitter theology had not been alleviated by the broader study of

law were no longer wanted in positions where they might repeat that lasting disgrace which the trials for witchcraft inflicted on New England and which time can never efface.

Though in the early years of the Province regulations concerning admission to the bar were uncertain and imperfect, so far as Barristers were concerned something like the custom in England prevailed. There Barristers before admission to plead at the bar must have resided three years in one of the Inns of Court if a graduate at Cambridge or Oxford, and five years if not. Those Inns were the Inner Temple, the Middle Temple, Lincoln's Inn and Gray's Inn. In Massachusetts the rule seems to have required a practice at one period of three, at another of four and at still another period of seven years in the Inferior Courts.

Before the Act was passed establishing the Supreme Judicial Court the following entry was made in the records of the Superior Court of Judicature :

“Suffolk ss: Superior Court of Judicature at Boston, third Tuesday of February, 1781, present William Cushing, Nathaniel P. Sargeant, David Sewall and James Sullivan; and now, at this term the following rule is made by the Court and ordered to be entered, viz : Whereas learning and literary accomplishments are necessary as well to promote the happiness as to preserve the freedom of the people, and the learning of the law when duly encouraged and rightly directed, being as well peculiarly subservient to the great and good purpose aforesaid, as promotive of public and private justice; and the Court being at all times ready to bestow peculiar marks of approbation upon the gentlemen of the bar, who, by a close application to the study of the science they profess, by a mode of conduct which gives a conviction of the rectitude of their minds, and a fairness of practice that does honor to the profession of the law, shall distinguish

themselves as men of science, honor and integrity : Do order that no gentleman shall be called to the degree of Barrister until he shall merit the same, by his conspicuous bearing, ability and honesty : and that the Court will, of their own mere motion call to the bar such persons as shall render themselves worthy as aforesaid : and that the manner of calling to the bar shall be as follows : The gentleman who shall be a candidate shall stand within the bar, the Chief Justice, or in his absence the Senior Justice shall in the name of the Court repeat to him the qualifications necessary for a Barrister at Law ; shall let him know that it is a conviction in the mind of the Court of his being possessed of these qualifications that induces them to confer the honor upon him ; and shall solemnly charge him so to conduct himself as to be of singular service to his country by exerting his abilities for the defence of her constitutional freedom ; and so to demean himself as to do honor to the Court and bar."

The Supreme Judicial Court made the following entry in its records :

"Suffolk, ss: At the Supreme Judicial Court at Boston the last Tuesday of August, 1783, present, William Cushing, Chief Justice, and Nathaniel P. Sargent, David Sewall and Increase Sumner Justices, ordered that Barristers be called to the bar by special writ to be ordered by the Court and to be in the following form :

"COMMONWEALTH OF MASSACHUSETTS.

"To A. B. Esq., of —— Greeting: We well knowing your ability, learning and integrity command you that you appear before our Justices of our Supreme Judicial Court next to be holden at —— in and for our county of —— on the —— Tuesday of —— then and there in our said Court to take upon you the state and degree of Barrister at Law. Hereof fail not. Witness —— Esq., our Chief Justice at Boston the —— day of —— in the year of our Independence —— . By order of the Court.

"———Clerk."

“Which writ shall be fairly engrossed on parchment and delivered twenty days before the session of the same Court by the Sheriff of the same county to the person to whom directed and being produced in Court by the Barrister and there read by the Clerk, and proper certificate thereon made shall be redelivered and kept as a voucher of his being legally called to the bar, and the Barristers shall take rank according to the date of their respective writs.”

In 1836 the distinction between Attorney and Counsellor was abolished. The question may well be asked whether a return to the old formalities and requirements may not become necessary to purify and elevate the bar. A period of probation before an Attorney could enter the higher rank of the profession like that of Counsellor or Barrister would serve to promote study, industry and honorable practice and check the pettifogging spirit which the flood of admissions, especially in Suffolk County, has tended to increase.

It is known that in 1768 there were twenty-five Barristers in Massachusetts but how early the order of Barrister existed in the State, the writer is unable to say. Of the twenty-five, eleven were in Suffolk County, Richard Dana, Benjamin Kent, James Otis, Jr., Samuel Fitch, William Read, Samuel Swift, Benjamin Gridley, Samuel Quincy, Robert Auchmuty, and Andrew Cazneau, of Boston, and Jonathan Adams, of Braintree; five were in Essex, Daniel Farnham and John Lowell, of Newburyport; William Pynchon, of Salem; John Chipman, of Marblehead, and Nathaniel Peaslee Sargent, of Haverhill; one was in Middlesex, Jonathan Sewall; two were in Worcester, James Putnam, of Worcester, and Abel Willard, of Lancaster; three were in Bristol, Samuel White and Robert Treat Paine, of Taunton, and Daniel Leonard, of Norton; two were in Plymouth, James Hovey and Pelham Winslow, of Ply-

mouth, and one in Hampshire, John Worthington, of Springfield. After that date the following Barristers were called: Joseph Hawley and Caleb Strong, of Northampton; David Sewall, of York, then a part of Massachusetts; Moses Bliss and Jonathan Bliss, of Springfield; Zephaniah Leonard, of Taunton; Theophilus Bradbury and David Weyer, of Falmouth (Portland then a part of Massachusetts), Mark Hopkins, of Great Barrington; Simeon Strong, of Amherst; John Sullivan, of Durham; Daniel Oliver, of Hardwick; Francis Dana, of Cambridge; Samuel Salter Blowers, Benjamin Hichborn, William Tudor, Perez Morton, William Wetmore and John Gardiner, of Boston; Daniel Bliss, of Concord; Samuel Porter, of Salem; Joshua Upham, of Brookfield; Shearjashub Bourne, of Barnstable; James Sullivan, of Biddeford; Jeremiah D. Rogers, of Littleton; Oakes Angier, of Bridgewater; John Sprague, of Lancaster; Elisha Porter, of Hadley; Theodore Sedgwick, of Sheffield; Theophilus Parsons, of Newburyport and Levi Lincoln, of Worcester. The above, numbering fifty-six, are believed to be all ever called to the bar in Massachusetts. As they may be considered the leaders of the bar in their time, short sketches will be included in this narrative of such as have left any available record.

Richard Dana, son of Daniel, and grandson of Richard, the ancestor, who settled in Cambridge in 1640, was born in Cambridge, July 7, 1699, and died in Cambridge, May 17, 1772. He graduated at Harvard in 1718 and after practicing law for a time in Marblehead, continued it in Charlestown and Boston. He married a sister of Judge Edmund Trowbridge, and he was father of Judge Francis Dana and grandfather of Richard H. Dana, the poet.

Benjamin Kent was born in Charlestown, and graduated at Harvard in 1727. He studied divinity, and in

1733 was settled over a parish in Marlboro where he remained two years. He next studied law and became a Barrister. Being a Loyalist he retired to Halifax at the Revolution and there died in 1788.

James Otis, Jr., the patriot so-called, has been already noticed as Advocate General of Admiralty.

Samuel Fitch was an addresser of Hutchinson in 1774, Advocate General of Admiralty and Solicitor to the Board of Commissioners. He went to Halifax in 1776 and in 1778 was proscribed and banished. He went to England and in 1779 was a Loyalist addresser to the King. He graduated at Yale in 1742, received an honorary degree of Master of Arts from Harvard in 1766, and died probably in England in 1784.

William Reed has already been noticed as Judge of Admiralty.

Samuel Swift graduated at Harvard in 1735, and died in 1775.

Benjamin Gridley has already been noticed as Judge of the Inferior Court of Common Pleas, for Suffolk County.

Samuel Quincy has already been noticed as Solicitor General of the Province.

Robert Auchmuty has been noticed as Judge of Admiralty.

Andrew Cazneau was an educated lawyer. At the Revolution he went to England in 1775 and afterwards to Bermuda, where he held office under the crown. He was proscribed in 1778 but returned to Boston in 1788, and died in Roxbury in 1792. He married, in 1769, Hannah, daughter of John Hammock, a Boston merchant.

Jonathan Adams has left no record known to the writer.

Daniel Farnham, son of Daniel, a native of Andover,

Mass., was born in York, Maine, in 1719, and graduated at Harvard in 1739. He studied law in the office of Edmund Trowbridge of Cambridge, and was admitted to the Essex bar. He settled in Newburyport and continued in practice until the Revolution. He adhered to the crown but remained at his home. He married, in July, 1740, Sybil, daughter of Rev. Samuel Angier of Watertown, and granddaughter of Uriah Oakes, the fourth President of Harvard College, and died in 1776.

John Lowell, son of Rev. John Lowell, was born in Newbury, Mass., June 17, 1743, and graduated at Harvard in 1760. He studied law with Oxenbridge Thacher and was admitted to the bar in 1762. He began practice in Newburyport but removed to Boston in 1777. In 1776 he was a Representative from Newburyport and in 1778 from Boston. He was a delegate to the State Constitutional Convention in 1780, member of Congress in 1783, Judge of the Court of Appeals from 1783 to 1789, Judge of the United States District Court for Massachusetts from 1789 to 1801, Chief Justice of the Circuit Court for Maine, Massachusetts, New Hampshire and Rhode Island from 1801 until the law creating the Court was repealed in 1802. He died in Roxbury, May 6, 1802. He received the degree of LL. D. from Harvard in 1792.

William Pynchon was born in Springfield, Mass., in 1725, and graduated at Harvard in 1743. In 1745 he entered the office of Stephen Sewall of Salem as student of law and was admitted to the Essex bar. He died in Salem in March, 1789.

John Chipman, son of Rev. John Chipman of Marblehead, graduated at Harvard in 1738 and died in Falmouth, now Portland, in July, 1768.

Nathaniel Pearslee Sargeant has been noticed as Judge of the Superior Court of Judicature.

Jonathan Sewall has been noticed as Attorney General of Massachusetts.

James Putnam was born in Danvers, Mass., in 1725, and graduated at Harvard in 1746. He studied law with Edmund Trowbridge of Cambridge and settled in Worcester, practicing also in Suffolk County. He went to England in 1776 and in 1778 was proscribed and banished. In 1784 he was appointed Judge of the Supreme Court of New Brunswick and died at St. John in 1789.

Abel Willard was born in Lancaster, Mass., in January, 1732, and graduated at Harvard in 1752. He studied law in Boston with Benjamin Pratt, and was admitted to the bar in 1755. He practiced in Lancaster until the Revolution, when he removed to Boston. In 1776 he retired to Halifax, and in 1778 was proscribed and banished. He married Eliza, daughter of Rev. Daniel Rogers, and died in England in 1781.

Samuel White, son of Samuel and Ann (Bingley) White, was born in Weymouth, Mass., April 2, 1710, and graduated at Harvard in 1731. He studied law while in service as Deputy Sheriff, and after admission to the bar settled in Taunton in 1739. In 1746, the year Taunton became the shire of Bristol County, to succeed the town of Bristol, which had been declared by a Royal Commission to belong to Rhode Island, he was appointed King's Attorney and held that office until his death. He was a Representative from Taunton from 1749 to 1753, and from 1756 to 1759, and in 1764 and 1765, serving as Speaker of the House of Representatives in 1750-1764 and 1765. He was also a member of the Council from 1767 to 1769. He married, in November, 1735, Prudence, daughter of Samuel Williams of Taunton, and died March 20, 1769.

Robert Treat Paine has been noticed as an appointed

Judge of the Superior Court of Judicature, an office which he declined.

Daniel Leonard graduated at Harvard in 1760. He moved from Norton to Boston and is mentioned as present at a meeting of the Suffolk bar January 3, 1770, at the Bunch of Grapes tavern on the corner of State and Kilby streets, to form a bar association. He died in 1829.

James Hovey, son of Ivory Hovey, was born in Ipswich, Mass., in 1709, and was practicing in Plymouth before 1735. He married, first, in 1735, Lydia, daughter of John Atwood, second, in 1771, Mary Harlow, and third, in 1774, Margaret Connell. He died in Plymouth in 1781.

Pelham Winslow, son of General John and Mary (Little) Winslow, and great-great-grandson of Governor Edward Winslow, of Plymouth, was born in Plymouth in 1737, and graduated at Harvard in 1753. Being a Loyalist he joined the British Army in 1776 and died in the service on Long Island in 1783. He married, Joanna, daughter of Gideon White of Plymouth.

John Worthington was born in Springfield, Mass., November 24, 1719, and graduated at Yale in 1740. He was a tutor at Yale, and after studying law with Phinehas Lyman in Suffield, began practice in Springfield in 1744. He died in April, 1800.

John Gardiner, was son of Dr. Sylvester Gardiner, and was born in Boston in 1731. He studied law at the Inner Temple, London, and in June, 1761, was admitted to practice in Westminster Hall. After a short practice in England he was appointed Attorney General at the Island of St. Christopher and removed there. After the Revolution he came to Boston where he was recognized as a citizen by a special act passed February 13, 1784. He afterwards removed to Pownalboro,

Maine, and was drowned off Cape Ann, October 15, 1793. He received a degree of Master of Arts from the University of Glasgow in 1755, and from Harvard in 1791. He married, Margaret Harris, of Haverford, Wales.

Joseph Hawley, grandson of Judge Joseph Hawley of the Inferior Court of Common Pleas for Hampshire County, was born in Northampton, Mass., in 1724, and graduated at Yale in 1742. He studied theology and served in 1745 as Chaplain in the expedition against Louisburg. He afterwards studied law with General Lyman of Suffield, Mass., and began practice in Northampton in 1749. He was Representative from 1764 to 1776, and a member of Provincial Congress in 1774 and 1775. He died March 10, 1788.

David Sewall has been noticed as a Judge of the Superior Court of Judicature.

Moses Bliss graduated at Yale in 1755. He studied divinity, but after preaching a short time studied law, and was admitted to the bar in 1761, practicing at the Hampshire bar.

Zephaniah Leonard graduated at Yale in 1758, and received an honorary degree of Master of Arts from Harvard in 1763, and from Brown in 1793. He was at one time High Sheriff of Bristol County and died in 1814.

Theophilus Bradbury was born in Newbury, Mass., November 13, 1739, and graduated at Harvard in 1757. He first taught school, and after studying law settled in Falmouth, now Portland, remaining there until 1779, when he returned to Newbury. He was a Representative and State Senator, and also a member of Congress from 1795 to 1797. He was appointed Judge of the Supreme Judicial Court in 1797 and held that office until 1803. He died September 6, 1803.

David Weyer of Portland has no record accessible to the author.

Mark Hopkins, son of Timothy Hopkins, was born in Waterbury, Conn., in 1739, and graduated at Yale in 1758. He was admitted to the bar in Hampshire County, when that county included what is now Berkshire County, and settled in Great Barrington. At the time of the incorporation of Berkshire County, April 21, 1761, there were only six lawyers within its limits, John Huggins, Elisha Huggins, John Ashley, Theodore Sedgwick and Mr. Hopkins. He died at White Plains while serving as Colonel in the Revolutionary army, October 26, 1776.

Simeon Strong was born in Northampton, Mass., March 6, 1736, and graduated at Yale in 1756. He was admitted to the bar in 1761, was a Representative from 1767 to 1769, Senator in 1793, and in 1801 was appointed Judge of the Supreme Judicial Court, serving until his death at Amherst, Mass., December 14, 1805.

John Sullivan was born in Berwick, Maine, February 17, 1740. He practiced law in Durham, N. H., was a member of the first Congress in 1774, and in 1775 was appointed by Congress Brigadier General, and in the same year Major General, distinguishing himself at Trenton and in the battle of Brandywine. From 1782 to 1786 he was Attorney General of New Hampshire, and from 1786 to 1789 President of the State. In 1789 he was appointed Federal Judge of New Hampshire and held that office until his death at Durham, January 23, 1795.

Daniel Oliver was born in Middleboro, Mass., and graduated at Harvard in 1762. He was admitted to the bar in 1781 and settled in Hardwick. He died in 1826.

Francis Dana, son of Richard, was born in Charles-

town, Mass., January 13, 1743, and graduated at Harvard in 1762. He studied law with Edmund Trowbridge of Cambridge and after his admission to the bar in 1767 practiced in Boston. He was a delegate to the Provincial Congress in 1774, and in 1776 a member of the Executive Council. He was a delegate to the Continental Congress in 1776 and 1778, Secretary to John Adams, who was appointed in 1779 to negotiate peace, and in 1781 was appointed Minister to St. Petersburg, where he remained two years. In 1784 he was again a delegate to Congress, and January 18, 1785, was appointed Judge of the Supreme Judicial Court, and November 29, 1791, Chief Justice. He retired from the bench in 1806 and died in Cambridge, April 25, 1811.

Sampson Salter Blowers was born in Boston, March 22, 1742, and graduated at Harvard in 1763. He studied law with Thomas Hutchinson and was associated with Adams and Quincy in the defense of Captain Preston in 1770. He was a Loyalist, and on his return in 1778 from England, where he had gone in 1774, he found his name on the proscription list. After a short imprisonment he retired to Halifax, N. S., where in 1785 he was appointed Attorney General, and in 1797 Chief Justice of the Supreme Court. He died at Halifax, October 25, 1842.

Daniel Bliss, son of Rev. Daniel, was born in Concord, Mass., March 18, 1740, and graduated at Harvard in 1760. He studied law in the office of Abel Willard of Lancaster, and was admitted to the Worcester County bar in 1765. He settled first in Rutland, Mass., and afterwards, in 1772, in Concord, but finally, being a Loyalist, retired to Fredericton, New Brunswick, where he became Chief Justice of the Provincial Court of Common Pleas and died in 1806.

Samuel Porter was of Salem. He studied law with

Daniel Farnham of Newburyport and was admitted to the Essex County bar. Being a Loyalist, he went to England and died in 1806. He graduated at Harvard in 1763.

Joshua Upham was born in Brookfield, Mass., November 14, 1741, and graduated at Harvard in 1763. He studied law in New York and Boston and being a Loyalist removed to New Brunswick, where he became Judge of the Supreme Court of the Province. He was the father of the late Hon. Charles W. Upham of Salem. He died in London in 1808.

Shearjashub Bourne was born in Barnstable, Mass., and graduated at Harvard in 1764. He began practice in Barnstable, but as early as 1796 was a member of the Suffolk bar, and was appointed in 1801, Chief Justice of the Suffolk County Court of Common Pleas.

James Sullivan has been noticed as Judge of the Superior Court of Judicature.

Jeremiah D. Rogers has left no record accessible to the writer.

Oakes Angier was son of Rev. John Angier of East Bridgewater, and great-grandson of Uriah Oakes, President of Harvard College from 1675 to 1681. He graduated at Harvard in 1764, and practiced in Swansey, Plymouth and Bridgewater. He died in 1786.

John Sprague was born in Rochester, Mass., in 1740, and graduated at Harvard in 1765. He studied law in the office of James Putnam of Worcester, and was admitted to the Worcester County bar in 1768. He removed to Newport, R. I., and later to Keene, N. H., and finally to Lancaster, Mass., where he became a partner of Abel Willard. He served two years in the State Senate and was High Sheriff of Worcester County from 1788 to 1792. In 1798 he was appointed Judge of the Common Pleas Court of Worcester County and remained on the bench until his death in 1800.

Caleb Strong was born in Northampton, Mass., January 9, 1745, and graduated at Harvard in 1764. He was descended from John Strong, who came from Taunton, England, in 1630, and settled in Northampton. He was admitted to the Hampshire bar in 1772, and settled in his native town. He was County Attorney from 1776 to 1800, a member of the State Convention in 1779, and State Senator from 1780 to 1789. He was a member of the Convention to frame a national constitution, was United States Senator from 1789 to 1796, and Governor of Massachusetts from 1800 to 1807 and from 1812 to 1816. He died in Northampton, November 7, 1819.

Elisha Porter, graduated at Harvard in 1761, and was practicing in Hadley in 1774. He died in 1796.

Theodore Sedgwick, son of Benjamin, was born in Hartford, Conn., in May, 1746, and graduated at Yale in 1765. In April, 1766, he was admitted to the bar and practiced in Great Barrington and Sheffield. He was on the staff of General John Thomas in the Revolution, Representative, delegate to the Continental Congress, and from 1788 to 1797, a member of Congress. He was Speaker of the Massachusetts House of Representatives in 1788-89, United States Senator from 1796 to 1799, and in 1802, he was appointed Judge of the Supreme Judicial Court, serving until his death in Boston, June 24, 1813.

Benjamin Hichborn graduated at Harvard in 1768 and practiced in Boston. He died in 1817.

Theophilus Parsons, son of Rev. Moses Parsons, was born in Newbury, Mass., February 24, 1750, and graduated at Harvard in 1769. He was admitted to the bar in Portland in 1774, and established himself in Newburyport in 1777. In 1800 he removed to Boston and was made Chief Justice of the Supreme Judicial Court in 1806, serving until his death in Boston, October 30, 1813.

Jonathan Bliss was born in Springfield, Mass., in 1742, and graduated at Harvard in 1763. He studied law with Thomas Hutchinson and was a Representative in 1768. He was proscribed as a Loyalist in 1778, and removed to New Brunswick in 1783. In 1785 he was a member of the Provincial Legislature and Attorney General of New Brunswick. In 1809 he was appointed Chief Justice, and served until his death, which occurred in Frederickton, N. B., in 1822.

William Tudor was born in Boston, March 28, 1750, and graduated at Harvard in 1769. He studied law with John Adams in Boston, and was admitted to the bar of Suffolk County, July 27, 1772. He served on the staff of Washington as Judge Advocate with the rank of Colonel, served in the State Senate and House of Representatives, and in 1809-10 was Secretary of the Commonwealth. He married Delia Jarvis, March 5, 1778, and died in Boston, July 8, 1819.

Perez Morton, son of Joseph and Amiah (Bullock) Morton, was born in Plymouth, October 22, 1750, and graduated at Harvard in 1771. He was appointed Attorney General, September 7, 1810, and held office until succeeded by James T. Austin, May 24, 1832. He died October 14, 1837.

William Wetmore graduated from Harvard in 1770, and was a member of the Suffolk bar as early as 1787. In 1811 he was appointed Associate Justice of the Circuit Court of Common Pleas for the Middle Circuit, of which Suffolk County formed a part. He died in 1830.

Levi Lincoln, son of Enoch Lincoln, was born in Hingham, Mass., May 15, 1749, and graduated at Harvard in 1772. He studied law with Joseph Hawley of Northampton, and was admitted to the bar in Worcester where he settled and was at once appointed Clerk of the Courts. In 1776 he was appointed Judge of Probate, and in

1779 was made agent to prosecute claims against the estates of loyal refugees. He was a delegate to the State Convention in 1780, a member of the House of Representatives in 1796, of the Senate in 1797, member of Congress from 1799 to 1801, United States Attorney General from 1801 to 1805, member of the Council in 1806, Lieutenant Governor in 1807-8, acting Governor in 1809, and in 1811 declined a seat on the bench of the United States Supreme Court. He died in Worcester, April 14, 1820.

It is worthy of notice as indicating the extent of loyal feeling among educated men that of the twenty-five Barristers in 1768, five died before the Revolution, and that of the twenty remaining, nine were sufficiently pronounced in their adherence to the crown to give up their estates and leave the country, while one or more in addition were silent sympathizers with the refugees.

In the early days of the Province there was no regular period of study prescribed for admission to the bar. An entry in the diary of Judge Lynde under date of August 4, 1718, taken from a paper read by Mr. George Dexter at the November meeting of the Massachusetts Historical Society in 1881 is as follows: "My dear Benjamin went to his uncle, Col. S. Brown, for three years." Mr. Dexter went on to say: "This was presumably for the purpose of preparing for his profession, but the father having himself received a special legal education may have required more than the ordinary professional training for his son. John Adams, who was admitted an Attorney November 2, 1758, had studied with Mr. Putnam of Worcester very little more than two years, and had taught a school there at the same time that he pursued his legal studies." Judge Washburn expresses the opinion that the requirement of three years' study was adopted a short time before the Revolution on the rec-

ommendation of the Essex bar. This can hardly be true, for we know that the order of Barristers existed before 1761, and that the requirements for admission to the order were three years' preliminary study, two years' practice in the Inferior Court of Common Pleas, and two years' subsequent practice in the Superior Court. With regard to John Adams above referred to, in the absence of positive proof that he did not study three years, the fact that he graduated from Harvard in the summer of 1755, and was admitted to the bar in November, 1758, suggests the possibility that he was admitted at the close of three years' preparation.

The term Barrister was abolished in 1806, and in that year Counsellors were for the first time recognized. At the March term of the Supreme Judicial Court for Suffolk County in that year, the following rules were adopted and may be found in the second volume of the Massachusetts Reports :

“REGULA GENERALIS.

“Ordered by the Court that hereafter no motion for a new trial shall be sustained where the party moving it shall be entitled to a review of right, unless the right of review shall be relinquished on record, excepting when the verdict shall have been given against the direction of the Court in matters of law.

“REGULAE GENERALES.

“1. No Attorney shall do the business of Counsellor unless he shall have been made or admitted as such by the Court.

“2. All Attorneys of the Court who have been admitted three years before the sitting of the Court shall be and are hereby made Counsellors and are entitled to all the rights and privileges as such.

“3. No Attorney or Counsellor shall hereafter be admitted without a previous examination.

“ 4. The Court will from time to time appoint from the Barristers and Counsellors a competent number of examiners, any two or more of whom shall examine all candidates for admission to practice as Counsellors or Attorneys at their expense ; and whenever a candidate shall upon examination be by them deemed duly qualified, they shall give a certificate in form following. . . .

“ 5. If after an examination the examiners shall refuse such a certificate as aforesaid they shall be required to give a certificate of their refusal, and the candidate may appeal from the decision of the examiners to a justice of the Court, who will thereupon examine him and either confirm or reverse the decision of the examiners ; and in case of reversal the candidate may apply to the Court for admission.

“ 6. If upon an examination such certificate shall be refused it shall be conclusive, unless there be an appeal as aforesaid, so that no other examiners shall thereafter be appealed to without the express permission and direction of the Court.

“ 7. No examiner shall undertake to examine any candidate who was in whole or in part instructed by him in his office.

“ 8. The following described persons shall be candidates for examination and admission to the bar as Attorneys, that is to say, firstly, all who have been heretofore admitted as Attorneys in any Court of Common Pleas in the Commonwealth, and who at the time they shall apply for examination shall be in regular practice therein ; and second all such as have, besides a good school education, devoted seven years at the least to literary acquisition, and three years thereof at the least in the office and under the instruction of a Barrister or Counsellor practicing in the Court.

“ 9. Before the examiners shall proceed to examine any person for admission as an Attorney who has not been admitted to a Court of Common Pleas it shall be certified to them by a Counsellor or Barrister, or by Counsellors or Barristers that the candidate has been in the office and under

the instruction of a Counsellor or Barrister for the term of three years at the least.

“ 10. The certificate as well of Barristers and Counsellors as to Attorneys, on the certificate of examiners as to Attorneys and Counsellors shall be returned to the clerk and by him recorded.

“ 11. Any person who has been admitted as an Attorney and as such practiced two years may be a candidate for admission and examined therefor.

“ 12. Every Counsellor may practice as an Attorney.

“ 13. Whenever an action shall hereafter be entered in Court the Attorney or Attorneys for the plaintiff or appellant shall become such of record and within the first two days the Attorney or Attorneys for the defendant or appellee shall cause themselves to become such of record.

“ 14. In all cases where parties do not appear in their proper person after the first day there shall be an Attorney or Attorneys of record for the defendant or appellee and none for the plaintiff or appellant, the defendant or appellee on motion shall have judgment as on a discontinuance; and whenever after the first two days there shall be an Attorney or Attorneys on record for the plaintiff or appellant and none for the defendant or appellee, the plaintiff or appellant shall on motion have judgment according to the nature of the case.

“ 15. Hereafter the Court will not hear any argument against on a question of law arising on special pleadings as special verdict, case stated, or motion in arrest of judgment, unless the material papers shall have been copied and delivered to the Judge respectively at or before the commencement of the term. ”

“ 16. All who now are Attorneys of the Court shall be allowed to advocate causes on issue of fact for the term of three years from the time they were admitted as Attorneys respectively, although they were not Counsellors.”

The examiners appointed under the above rules were

Theophilus Parsons, Christopher Gore, Samuel Dexter, Harrison Gray Otis, William Sullivan and Charles Jackson.

At the September term in Berkshire in the same year, 1806, the above rules were amended by adding, "that any person who shall have received an education comprising equal advantages with that expressed in the eighth rule of the court, adopted at the March term, although varying in the mode or circumstances, may be examined for admission as an attorney, on obtaining a license therefor from the Court or Judge; and if approved by two examiners shall receive a certificate from them conformable in substance to the fourth rule."

The liberality with which the rules were construed may be shown in the case of Holder Slocum, Jr., which though occurring seven or eight years before the date of the adoption of the above code, was probably attended by the same prescription of qualification. There was some doubt about his literary attainments, and the Bar Association referred the matter to Thomas Edwards, John Davis and Edward Gray, that, not having received a collegiate education he might be examined. The committee reported "that they find Mr. Slocum has so far attended to the Latin language that a moderate degree of attention and practice will probably enable him to render it sufficiently familiar for the purposes of his intended profession. He has paid no attention to the Greek, and has not been sufficiently instructed, in the opinion of your committee, in logic, metaphysics, and mathematics. He has read some approved writers in history and has attended considerably to the French language.

"It is the opinion of your committee that on his remaining in an office three years from the present time, with an attention for part of the time, under the direc-

tion of his instructors, to history and metaphysics, and occasionally to the Latin language, it will be proper, at the expiration of that period, if he continues the assiduity and attention which he has hitherto manifested, to allow of his admission to the bar."

The records show that Mr. Slocum was duly entered at the office of George Richards Minot, and was admitted to the bar in 1801. It is a commentary on the boasts of our higher and broader education that with the requirements of 1801 probably not more than three per cent of the applicants of 1899 would have been admitted to the bar in Massachusetts.

At the Suffolk term of the Supreme Judicial Court in 1807 the rules were still further amended by the order "that all gentlemen proposed by the bar for admission as Attorneys of the Court before the establishment of the rules regulating the admission of Attorneys published in March, 1806, may be admitted as Attorneys of the Court in the same manner as they might have been before the establishment of the said rules; and after admission they shall be considered as Attorneys of this Court from the time at which they were proposed for admission, and before the publication of the said rules, and this rule is to extend to all Attorneys who have been heretofore admitted Attorneys of the Court, having been proposed for admission before the publication of the said rules."

At the March term in Suffolk in 1810 the Court repealed the *Regulae Generales* of 1806 with their amendments, and adopted the following substitute:

"1. That any person may be admitted as Attorney of this Court who shall have had a liberal education and regular degree at some public college and shall afterwards have commenced and pursued the study of the law in the office and under the instruction of some Counsellor of the Court

for three years ; and shall afterwards have been admitted an Attorney of the Court of Common Pleas for the County in which such Counsellor with whom he has studied the law as aforesaid shall dwell ; having first been recommended by the bar of the said County to the Common Pleas as having a good moral character, and as suitably qualified for such admission ; and shall afterwards practice with fidelity and ability in some Court of Common Pleas within the State for the term of two years and shall then be recommended by the bar for admission as an Attorney of this Court, when holden for the County in which the person so recommended shall dwell.

“ 2. Any person not having a liberal education and a regular degree as aforesaid who shall have commenced and pursued the study of the law in the office of some Counsellor as aforesaid for the term of five years shall be considered as having a qualification for admission equivalent to the having had a liberal education and a regular degree as aforesaid.

“ 3. Any person having a liberal education and a regular degree as aforesaid who shall afterwards have commenced and pursued the study of the law in any other State in the office of an Attorney of the highest Judicial Court of such State for one year at the least, and afterwards shall pursue the study of the law in the office of some Counsellor of this Court for the term of two years shall be considered as having a qualification for admission equivalent to the having commenced and pursued the study of the law for three years in the office and under the instruction of some Counsellor of this Court.

“ 4. Any person not having had a liberal education and a regular degree as aforesaid who shall have commenced and pursued the study of the law in any other State in the office of an Attorney of the highest Judicial Court of such State for the term of two years at the least, and shall afterwards have pursued the study of the law with some Counsellor of this Court for the term of three years shall be considered as

having a qualification for admission equivalent to the having had a liberal education and a regular degree as aforesaid, and to the having pursued the study of the law for three years in the office of some Counsellor of this Court.

“5. The bar shall not recommend for admission as an Attorney any person either to any Court of Common Pleas or to this Court unless he is qualified for such admission agreeably to the provision of these rules. But the bar may recommend for admission as an Attorney to the Common Pleas any person now duly qualified by the rules hereby repealed for examination and admission as an Attorney of this Court; and further the bar may also recommend to the Court of Common Pleas, for admission as an Attorney thereof any person who before the establishment of the rules had commenced and is now pursuing the study of the law with some Counsellor of this Court, when such person would by virtue of the rules hereby repealed be qualified for examination and admission as an Attorney of this Court.

“6. If the bar of any Court shall unreasonably refuse to recommend either to this Court or to any Court of Common Pleas, for admission as an Attorney, any person suitably qualified for such admission; or, if after the recommendation of the bar, the Common Pleas shall unreasonably refuse to admit as an Attorney the person so recommended, such person submitting to an examination by one of the Justices of the Court, producing to him sufficient evidence of his good moral character, may be admitted as an Attorney of this Court on the certificate of such Justice that he is duly qualified therefor and has pursued the study of the law agreeably to the provisions of the rules.

“7. Any person who shall have been admitted an Attorney of the highest Judicial Court of any other State in which he shall dwell, and afterwards shall become an inhabitant of this State, may be admitted an Attorney or Counsellor of this Court, subject to the discretion of the Justice thereof, after due inquiry and information concerning his moral character and professional qualification.

“ 8. Any person who now is, or who shall be, an Attorney of this Court, having practiced law therein with fidelity and ability as an Attorney thereof for two years, may be admitted a Counsellor of this Court, when holden for the County in which such Attorney shall dwell, on the recommendation of the bar of such County, or without such recommendation if it be unreasonably refused; unless such person was admitted an Attorney of this Court because he had been unreasonably refused admission as an Attorney of the Court of Common Pleas, in which case he shall not be recommended nor admitted as a Counsellor of this Court until he has practiced law as an Attorney thereof for the term of four years.

“ 9. All issues in law and in fact and all questions of law arising on writs of error, certiorari and mandamus, or special verdict, or motions for new trials and in arrest of judgment, shall be argued by the Counsellors of this Court. And the Counsellors of this Court may also practice as Attorneys.”

In 1836 a law was passed which provided that any citizen of the Commonwealth, or any alien who had expressed his intention pursuant to law, to become a citizen, of twenty-one years of age, of good moral character, might become an Attorney after three years' study, and on the recommendation of an Attorney be examined for admission. By laws passed in 1852, Attorneys were permitted admission after three years' study in the office of an Attorney, and in 1876 it was provided by law that an Attorney could be admitted only on examination.

In 1882 it was enacted that “the provisions of law relating to the qualification and admission to practice of attorneys at law, shall apply to women,” and in 1891 a very stringent law was passed, imposing a fine “not exceeding one hundred dollars or imprisonment not exceeding six months,” on persons continuing to practice as Attorneys after removal from the bar for “deceit,

malpractice, or other gross misdemeanor," and a fine not exceeding five hundred dollars or imprisonment not exceeding one year for a second conviction.

In 1897 it was provided by a law which as amended in 1898 permits any citizen of the Commonwealth, or an alien who has made the primary declaration to become a citizen of the United States, and who is an inhabitant of the Commonwealth, of the age of twenty-one years, to petition the Supreme Judicial Court, or the Superior Court to be examined for admission, on the payment of a fee of ten dollars to the clerk, which shall be forwarded by him to the Treasurer of the Commonwealth. The law further provides that "the Justices of the Supreme Judicial Court shall appoint a board of bar examiners of five members, no two of whom shall reside in the same county, whose term of office shall commence on the first day of October, 1897, and who shall hold office, one for the term of one year, one for the term of two years, one for the term of three years, one for the term of four years, and one for the term of five years, and thereafter one member shall be appointed annually for the term of five years."

Examinations are held in Boston in January and July, but the rules of the board provide that concurrent examinations may be appointed to be held in other places from time to time, as may appear to be necessary or expedient.

There was a Bar Association formed in 1770 in Boston, which by its rules regulated admissions to the bar. It was formed on the evening of Wednesday, January 1st, in that year, at the Bunch of Grapes tavern, at the upper corner of State and Kilby streets. It does not seem to have been confined to Boston, as the meeting was attended by gentlemen from other towns, and it was voted "that the Barristers and Attorneys at the Superior

Court belonging to this and neighboring towns will form themselves into a society or law club, to meet at Mr. Ingersoll's on the evening of the first Wednesday of every month for the year ensuing." The gentlemen present were Benjamin Kent, James Otis, Samuel Fitch, William Reed, Samuel Swift, Samuel Quincy, John Adams and Andrew Cazneau, all of whom were Barristers, and Francis Dana, Josiah Quincy and Sampson Salter Blowers, Attorneys. At the meeting on the first Wednesday in October, 1770, it was voted that Messrs. Dana, Quincy and Blowers "be recommended to the Superior Court to be admitted as Barristers, they having studied and practiced the usual time." On the 21st of November it was voted that Samuel Sewall, who produced a certificate from the Clerk of the Inferior Court that he was admitted as Attorney in that Court on the first Tuesday in January, 1767, be recommended for admission as Attorney to the Superior Court.

At the meeting held on the 2d of January, 1771, it was voted "that whenever the defendant's counsel shall point out to the plaintiff's any defect in his writ or declaration, he shall have liberty to amend upon payment of six shillings before plea pleaded. But if he will put the defendant's counsel to plead and the writ or declaration is adjudged insufficient, he shall then pay eighteen shillings for the amendment, in case the amendment is allowed him by the Court, and the defendant shall choose costs instead of an imparlance. This rule to extend only to such defect in writs and declarations as shall be owing to mistake or inadvertence, or other fault of the counsel who drew the writ, or his clerk."

At a meeting held February 6, 1771, it was agreed "that we will not take any young gentlemen to study with us without previously having the consent of the bar of the County; that we will not recommend any

persons to be admitted to the Superior Court as Attorneys who have not studied with some barrister three years at least, nor as Attorneys in the Superior Court who have not studied as aforesaid and been admitted at the Inferior Court two years at least, nor recommend them as Barristers till they have been through the preceding degrees and been Attorneys at the Superior Court two years at least, except those gentlemen who are already admitted in this Court as Attorneys at Superior and Inferior Courts, and that they must be subject to the rule so far as is yet to come." To this agreement it was added, "that the consent of the bar shall not be taken but at a general meeting of the bar of the County and shall not be given to any young gentleman who has not had an education at College or a liberal education in the judgment of the bar."

The records of the Association give the names of the following students in the various offices which may be interesting to readers :

Thomas Edwards, in the office of Josiah Quincy, 1772; Jonathan Williams, in the office of John Adams, 1773; Edward Hill, in the office of John Adams, 1773; John Trumbull, in the office of John Adams, 1774; Nathaniel Brattle, in the office of Mr. Blowers, 1774; Nathan Rice, in the office of Mr. Adams, 1774; John Thaxter, in the office of Mr. Adams, 1774; Joshua Thomas, in the office of Josiah Quincy, 1774; Jonathan Mason, in the office of Josiah Quincy, 1774; Henry Goodwin, in the office of Wm. Tudor, 1778; Rufus Emory, in the office of John Lowell, 1778; Fisher Ames, in the office of Wm. Tudor, 1778; George Richards Minot, in the office of Wm. Tudor, 1780; Peter Clarke, in the office of Increase Sumner, 1780; Wm. Hunter Torrens, in the office of John Lowell, 1781; Edward Sohier, in the office of John Lowell, 1781; Jo-

seph Hall, in the office of Benjamin Hichborn, 1781; Edward Wendell, in the office of John Lowell, 1781; David Leonard Barnes, in the office of James Sullivan, 1782; Edward Gray, in the office of James Sullivan, 1783; John Brown Cotting, in the office of John Lowell, 1783; Samuel Quincy, Jr., in the office of Christopher Gore, 1783; Harrison Gray Otis, in the office of John Lowell, 1783; John Rowe, in the office of Mr. Tudor, 1783; Richard Brook Roberts, in the office of Mr. Hichborn, 1783; Samuel Cooper Johonnot, in the office of Mr. Sullivan, 1784; William Hill, in the office of Mr. Gore, 1784; Fortescue Vernon, in the office of Mr. Hichborn, 1784; John Merrick, in the office of Thomas Dawes, 1784; John Lowell, Jr., in the office of Mr. Lowell, 1786; S. Borland, in the office of Mr. Lowell, 1786; James Sullivan, Jr., in the office of Mr. Sullivan, 1786; Thomas Russell, in the office of Mr. Lowell, 1786; Isaac Parker, in the office of Mr. Tudor, 1787; William Cranch, in the office of Thomas Dawes, 1787; Samuel Andrews, in the office of Mr. Hichborn, 1788; William Lyman, in the office of Mr. Sullivan, 1788; Nathl. Higginson, in the office of Wm. Wetmore, 1788; Phineas Bruce, in the office of Mr. Hichborn, 1788; Bes-senger Foster, in the office of Mr. Parsons, 1788; Edward Clarke, in the office of Mr. Lowell, 1789; John Lathrop, in the office of Mr. Lowell, 1789; Robert Paine, in the office of Mr. Paine, 1789; Josiah Quincy, in the office of Mr. Tudor, 1790; Nathaniel Fisher, in the office of Mr. Robbins, 1790; Ebenezer Gay, in the office of Mr. Gore, 1790; James Prescott, Jr., in the office of James Sullivan, 1790; Samuel Haven, in the office of Mr. Ames, 1790; Wm. Sullivan, in the office of James Sullivan, 1792; John Williams, in the office of Mr. Otis, 1792; John Ward Gurley, in the office of Mr. Lowell, 1796, provided his literary qualifications are found satisfac-

tory on examination by Messrs. Minot, Otis and Quincy he not having received a college education; Samuel A. Dorr, in the office of Judge Sullivan, 1797; John Heard, in the office of John Davis, 1797; Benjamin Wood, in the office of John Davis, 1797; Holder Slocum, Jr., in the office of George R. Minot, 1797; Nicholas Emory, in the office of Saml. Livermore, 1798; Charles Pinckney Sumner, in the office of Judge Minot, 1798; Richard Sullivan, in the office of Wm. Sullivan, 1798; Humphrey Devereux, in the office of Mr. Lowell, 1798; Thomas Paine, in the office of Mr. Paine, 1799; Thomas O. Selfridge, in the office of Mr. Paine, 1799; Artemas Sawyer, in the office of Mr. Gay, 1799; Wm. Hyslop Sumner, in the office of John Davis, 1799; Henry Cabot, in the office of Mr. Emery, 1800; Nathl. Sparhawk, in the office of George Blake, 1800; Charles Lowell, in the office of Mr. Lowell, 1800; Luther Richardson, in the office of Mr. Paine, 1801; David I. Greene, in the office of Wm. Sullivan, 1800; George Sullivan, in the office of James Sullivan, 1800; Warren Dutton, in the office of Mr. Lowell, 1809; Alpheus Baker, in the office of Mr. Lowell, 1801; Samuel Mather Crocker, in the office of Mr. Gray, 1801; John Knapp, in the office of John Davis, 1801; Thomas Welsh, in the office of John Davis, 1801; Arthur M. Walter, in the office of Mr. Otis, 1801; Benjamin Wells, in the office of Mr. Otis, 1801; Wm. Smith Shaw, in the office of Mr. Otis, 1801; John Codman, in the office of Mr. Lowell, 1802; James Elliott, in the office of Mr. Lowell, 1802; Timothy Fuller, in the office of Charles Paine, 1802; Timothy Boutelle, in the office of Mr. Gay, 1802; David Bradley, in the office of Mr. Heard, 1802; Aaron Emmes, in the office of Mr. Everett, 1802; James T. Austin, in the office of Wm. Sullivan, 1802; William Minot, in the office of Joseph Hall, 1803.

Among those recommended to be sworn as Attorneys were Benjamin Hichborn, William Tudor, Jonathan Williams Austin and Josiah Quincy, 1772; Nathaniel Coffin, 1773; Increase Sumner, John Bulkley and Perez Morton, 1774; Christopher Gore, Samuel Dagget, 1778; Jonathan Mason, 1779; Royal Tyler, Thomas Dawes and James Hughes, 1780; Benjamin Lincoln, Jonathan Fay, Fisher Ames, Rufus Amory and George R. Minot, 1781; David Leonard Barnes, 1783; Thomas Edwards, John Thaxter, Joseph Hall, Edward Sohier and Edward Walker, 1784; Edward Gray, 1785; Samuel Quincy, John Rowe and Harrison Gray Otis, 1786; Fortescue Vernon and Thomas Williams, 1787; John Merrick, Joseph Bartlett and Thomas Crafts, 1788; John Lowell, Jr., Isaac Parker, William Lyman, Samuel Andrews and Joseph Blake, 1789; Phineas Bruce and William Cranch, 1790; James Prescott, Jr., 1791; George Blake and Robert Paine, 1792; John Callender, Josiah Quincy, Francis Blake and Joseph Rowe, 1793; William Sullivan and John Williams, 1795; Isaac Story, 1796; William Thurston, 1797; Esekiel Bacon, Samuel A. Dorr, John Heard and Foster Waterman, 1798; Charles Davis, Charles Cushing, Jotham Bender and John W. Gurley, 1799; Holder Slocum, Jr., Richard Sullivan, Humphrey Devereux, Nathaniel Sparhawk, Artemas Sawyer and Thomas Paine, 1801; Arthur M. Walter, 1802; Warren Dutton, Aaron H. Putnam, Israel Munroe, Benjamin Wells and John Knapp, 1803; Thomas Welsh, Jr., and George Sullivan, 1804. ✓

Among the votes passed by the Association were the following :

“That in all cases when a gentleman shall be proposed as a student, who has not had a college education, he shall always undergo an examination by a committee

appointed by the bar previous to his admission as a student.

“That all students of colleges out of the State be not admissible to the bar until they shall have studied one year longer than those educated at Harvard University.

“That no student be recommended to the Court of Common Pleas for admission without having studied within the County one year at least of his time.

“That the sum to be paid by a student at law to his instructors shall be one hundred pounds lawful money at least.”

The records of the Association close with the year 1805, immediately preceding the adoption of the *Regulae Generales* in March, 1806, and it is probable that until that time the rules of the Association were the only rules regulating admission to the bar. The law passed July 3, 1782, establishing the Supreme Judicial Court, gave the Court authority to adopt regulations for admission of Attorneys and the creation of Barristers, but as at the time of the passage of that law the Association had for ten years or more established the qualifications of Attorneys, it is possible that the Supreme Court contented itself until 1806 with rules relating to Barristers only. As the writer recognizes in the lists of students the names of many who belonged to other counties than Suffolk, he thinks it possible that the jurisdiction of the Association covered the whole State, and that admissions to the Supreme Judicial Court were conducted in Boston. For instance, David Leonard Barnes was of Scituate, Joshua Thomas of Plymouth, Daniel Leonard of Taunton, Fisher Ames of Dedham, William Cranch of Weymouth, Benjamin Lincoln of Hingham, Joseph Bartlett of Plymouth, Samuel Adams Dorr of Medfield. But as he recognizes no names of persons be-

longing to the western part of the State, perhaps the Association was confined in its jurisdiction to the eastern part, and that in Worcester, Hampshire and Berkshire, the only western counties existing at that time, the Supreme Judicial Court acted without definite published regulations.

APPENDIX

A.

THE CHARTER OF "THE COUNCIL ESTABLISHED AT PLYMOUTH IN
THE COUNTY OF DEVON FOR THE PLANTING, RULING, ORDERING
AND GOVERNING OF NEW ENGLAND IN AMERICA."

"James, by the grace of God, King of England, Scotland, France and Ireland, Defender of the faith, etc.

"To all whom these presents shall come, greeting :

"Whereas upon the humble petition of divers of our well-disposed subjects, that intended to make several plantations in the parts of America between the degrees of thirty-four and forty-five, We, according to our princely inclination, favoring much the worthy disposition, in hope thereby to advance the enlargement of the Christian religion, to the glory of God Almighty, as also by that means to stretch out the bounds of our dominions and to replenish those deserts with people, governed by laws and magistrates, for the more peaceable commerce of all that in time to come shall have occasion to traffic into those territories, granted unto Sir Thomas Gates, Sir George Summers, Knights; Thomas Hamon and Raleigh Gilbert, Esquires; and others their associates, for the more speedy accomplishment thereof. by our letters patent, bearing date the 10th of April in the fourth year of our reign of England, France and Ireland, and of Scotland the fortieth, free liberty to divide themselves into two several colonies; the one called the first colony to be undertaken and advanced by certain knights, gentlemen and merchants in and about our city of London; the other, called the second colony to be undertaken and advanced by certain knights, gentlemen, merchants and their associates in or about our cities of Bristol, Exor, and our town of Plymouth, and other places, as in and

by our said letters patents, among other things more at large, it doth and may appear.

“ And whereas, since that time, upon the humble petition of the said adventurers and planters of the said first colony, we have been graciously pleased to make them one distinct and entire body by themselves, giving unto them their distinct limits and bounds, and have upon their like humble request granted unto them divers liberties, privileges, enlargements and immunities, as in and by our several letters patents it doth and may more at large appear.

“ Now, forasmuch as we have been, in like manner humbly petitioned unto by our trusty and well beloved servant, Sir Ferdinando Gorges, Knight, captain of our fort and island by Plymouth, and by certain the principal knights and gentlemen adventurers of the said second colony, and by divers other persons of quality, who now intend to be their associates, divers of which have been at great and extraordinary charges, and sustained many losses, in seeking and discovering a place fit and convenient to lay the foundation of a hopeful plantation, and have, divers years past, by God’s assistance, and their own endeavors, taken actual possession of the continent hereafter mentioned, in our name and to our use, as sovereign lord thereof, and have settled already some of our people in places agreeable to their desires in those parts, and in confidence of prosperous success therein, by the continuance of God’s divine blessing and our royal permission, have resolved in a more plentiful and effectual manner to prosecute the same, and to that purpose and intent have desired of us for their better encouragement and satisfaction therein; and that they may avoid all confusion, questions or differences between themselves and those of the said first colony; that we would likewise be graciously pleased to make certain adventurers, intending to erect and establish fisheries, trade and plantations within the territories, precincts and limits of the said second colony and their successors, one several distinct and entire body and to grant unto them such estate, charters, privileges, enlargements and immunities there as are in their

own letters patent hereafter particularly expressed and declared.

“ And forasmuch as we have been certainly given to understand by divers of our good subjects, that have for these many years past, frequented those coasts and territories between the degrees of forty and forty-eight, that there is no other the subjects of any Christian King or State, by any authority from their sovereign lords or princes, actually in possession of any of the said lands or precincts, whereby any right, claim, interest or title may, might or ought by that means accrue, belong or appertain unto then or any of them,

“ And also, for that we have been further given certainty to know, that within these late years there hath, by God’s visitation, reigned a wonderful plague, together with many horrible slaughters and murders committed among the savages and British people those heretofore inhabiting, in a manner to the utter destruction, devastation and depopulation of that whole territory, so as there is not left for many leagues together, in a manner, any that do claim or challenge any kind of interest therein, nor any other superior lord or sovereign to make claim thereunto, whereby we in our judgment, are persuaded and satisfied that the appointed time is come in which Almighty God in His great goodness and bounty towards us and our people, hath thought fit and determined that the large and goodly territories, deserted, as it were, by their natural inhabitants, should be possessed and enjoyed by such of our subjects and people as heretofore have and hereafter shall by His mercy and favor and by His powerful arm, be directed and conducted thither; in the contemplation and serious consideration whereof we have thought it fit, according to our kingly duty, so much as in us lieth, to second and follow God’s sacred will, rendering reverend thanks to His Divine Majesty for His gracious favor in laying open and revealing the same unto us before any other Christian prince or state, by which means, without offence, and, as we trust, to His glory, we may with boldness go on to the settling of so hopeful a work, which tendeth to the reducing and conversion

of such savages as remain wandering in desolation and distress to civil society and Christian religion, to the enlargement of our own dominions and the advancement of the fortunes of such of our good subjects as shall willingly interest themselves in the said employment, to whom we cannot but give singular commendations for their so worthy intention and enterprise.

“ We therefore, of our special grace, mere motion, and certain knowledge, by the advice of our lords and others of our privy council, have for us, our heirs and successors, granted, ordained and established, and in and by these presents, do for us, our heirs and successors, grant, ordain and establish that all that circuit, continent, precincts and limits in America lying and being in breadth from forty degrees of northerly latitude from the equinoctial line to forty-eight degrees of the said northerly latitude, and in length by all the breadth aforesaid throughout the main land, from sea to sea, with all the seas, rivers, islands, creeks, inlets, ports and havens within the degrees, precincts and limits of the said latitude and longitude, shall be the limits and bounds and precincts of the said second colony.

“ And to the end that the said territories may forever hereafter be more particularly and certainly known and distinguished, our will and pleasure is that the same shall, from henceforth, be nominated, termed and called by the name of New England in America, and by that name of New England in America, the said circuit, precinct, limit, continent, islands and places in America aforesaid, we do, by these presents, for us, our heirs and successors, name, call, erect, found and establish, and by that name do have continuance forever.

“ And for the better plantation, ruling and governing of the aforesaid New England in America, we will, ordain, constitute, assign, limit and appoint, and for us, our heirs and successors, we, by the advice of the lords and others of the said privy council, do, by these presents, ordain, constitute, limit and appoint, that from henceforth there shall be forever hereafter, in our town of Plymouth, in the County of Devon, one

body politic and corporate, which shall have perpetual succession, which shall consist of the number of forty persons and no more, which shall be, and shall be called and known by the name of the Council established at Plymouth, in the County of Devon, for the planting, ruling, ordering and governing of New England in America, and for that purpose we have at and by the nomination and request of the said petitioners, granted, ordained, established and confirmed, and, by these presents, for us, our heirs and successors, do grant, ordain, establish and confirm our right trusty and right well beloved cousins and counsellors, Lodowick, duke of Lenox, lord steward of our household ; George, lord marquis Buckingham, our high admiral of England ; James, marquis Hamilton ; William, earl of Pembroke, lord chamberlain of our household ; Thomas, earl of Arundel ; and our right trusty and right well beloved cousin William, earl of Bath ; and our right trusty and right well beloved cousin and counsellor, Henry, earl of Southampton ; and our right trusty and right well beloved cousin, William, earl of Salisbury ; and Robert, earl of Warwick ; and our right trusty and right well beloved John, viscount Haddington ; and our right trusty and right well beloved counsellor, Edward, lord Zouch, lord warden of our cinque ports, and our trusty and well beloved Edmond, lord Sheffield, Edward, lord Gorges ; and our well beloved Sir Edward Seymor, knight and baronet ; Sir Robert Mansel ; Sir Edward Zouch, our knight marshal ; Sir Dudley Diggs, Sir Thomas Roe, Sir Ferdinando Gorges, Sir Francis Popham, Sir John Brooks, Sir Thomas Gates, Sir Richard Hawkins, Sir Richard Edgecomb, Sir Allen Apsley, Sir Warwick Heale, Sir Richard Catchmay, Sir John Bourghier, Sir Nathaniel Rich, Sir Edward Giles, Sir Giles Mompesson, Sir Thomas Worth, knights ; and our well beloved Matthew Sutcliff, dean of Exeter ; Robert Heath, Esq., recorder of our city of London ; Henry Bourghier, John Drake, Raleigh Gilbert, George Chudley, Thomas Hamon and John Argall, esquires ; to be, and in and by these presents, we do appoint them to be the first modern and present Council, established at Plymouth,

in the County of Devon, for the planting, ruling, ordering and governing of New England in America, and that they, and the survivors of them, and such as the survivors and survivor of them shall, from time to time, elect and choose to make up the aforesaid number of forty persons, when, and as often as any of them or any of their successors shall happen to de-cease or to be removed from being of the said council, shall be, in and by these presents, incorporated, to have a perpetual succession forever, in deed, fact and name, and shall be one body corporate and politic; and that those, and such said persons and their successors, and such as shall be elected and chosen to succeed them, as aforesaid, shall be, and by these presents, are and be incorporated, named and called by the name of the Council established at Plymouth, in the County of Devon, for the planting, ruling and governing of New England in America; and them the said duke of Lenox, marquis Buckingham, marquis Hamilton, earl of Pembroke, earl of Arundel, earl of Bath, earl of Southampton, earl of Salisbury, earl of Warwick, viscount Haddington, lord Zouch, lord Sheffield, lord Gorges, Sir Edward Seymor, Sir Robert Mansel, Sir Edward Zouch, Sir Dudley Diggs, Sir Thomas Roe, Sir Ferdinando Gorges, Sir Francis Popham, Sir John Brooks, Sir Thomas Gates, Sir Richard Hawkins, Sir Richard Edgecomb, Sir Allen Apsley, Sir Warwick Heale, Sir Richard Catchmay, Sir John Bourghier, Sir Nathaniel Rich, Sir Edward Giles, Sir Giles Mompesson, Sir Thomas Worth, knights; Matthew Sutcliff, Robert Heath, Henry Bourghier, John Drake, Raleigh Gilbert, George Chudley, Thomas Hamon and John Argall, esquires, and their successors, one body corporate and politic, in deed and in name, by the name of the Council established at Plymouth, in the County of Devon, for the planting, ruling and governing of New England in America.

“ We do by these presents, for us, our heirs and successors, really and fully incorporate, erect, ordain, name, constitute and establish, and that, by the same name of the said council, they and their successors, forever hereafter be incor-

porated, named and called, and shall, by the same name, have perpetual succession.

“And further, we do hereby, for us, our heirs and successors, grant unto the said council established at Plymouth, that they and their successors, by the same name, be, and shall be, and shall continue persons able and capable in the law, from time to time, and shall, by that name of council aforesaid, have full power and authority, and lawful capacity and ability, as well to purchase, take, hold, receive, enjoy and to have to them and their successors, forever, any manors, lands, tenements, rents, royalties, privileges, immunities, reversions, annuities, hereditaments, goods and chattels whatsoever, of, or from us, our heirs and successors, and of, or from any other person or persons whatsoever, as well in and within this our realm of England, as in and within any other place or places whatsoever or wheresoever, and the same manors, lands, tenements and hereditaments, goods or chattels, or any of them, by the same name, to alien and sell, or to do, execute, or ordain and perform all other matters and things whatsoever to the said incorporation and plantation concerning and belonging.

“And further, our will and pleasure is that the said council, for the time being, and their successors, shall have full power and lawful authority, by the name aforesaid, to sue and be sued, implead and to be impleaded, answer and to be answered unto, in all manner of courts and places that now are, or hereafter shall be, within this our realm, and elsewhere, as well temporal as spiritual, in all manner of suits and matters whatsoever, and of what nature or kind soever such suits or actions be or shall be.

“And our will and pleasure is that the said forty persons, or the greater number of them, shall, and may, from time to time, and at any time hereafter, at their own will and pleasure, according to the laws, ordinances, and orders of or by them, or by the greater part of them hereafter, in manner and form in these presents mentioned to be agreed upon, to elect and choose amongst themselves, one of the said forty

persons, for the time being, to be president of the said council, which president, so elected and chosen, we will, shall continue and be president of the said council for so long a time as by the orders of the said council, from time to time to be made, as hereafter is mentioned, shall be thought fit, and no longer; unto which president, or, in his absence, to any such person as, by the orders of the said council, shall be thereunto appointed, we do give authority to give orders for the warning of the said council and summoning the company to their meetings.

“And our will and pleasure is that, from time to time, when, and so often as any of the said council shall happen to decease, or to be removed from being of the said council, that then, and so often, the survivors of them of the said council, and no other, or the greater number of them, who then shall be, from time to time, left and remaining, and who shall, or the greater number of which, that shall be assembled at a public court, or meeting, to be held for the said company, shall elect and choose one or more other person or persons to be of the said council, and which, from time to time, shall be of the said council, so that the number of forty persons of the said council may, from time to time, be supplied.

“Provided always, that as well the persons herein named, to be of the said council, as every other councillor hereafter to be elected, shall be presented to the lord chancellor of England, or to the lord high treasurer of England, or to the lord chamberlain of the household, of us, our heirs and successors, for the time being, to take his and their oath and oaths of a councillor and councillors, to us, our heirs and successors, for the said company and colony in New England.

“And further, we will grant, by these presents, for us, our heirs and successors, unto the said council, and their successors, that they and their successors shall have, and enjoy forever, a common seal, to be engraven according to their discretions; and that it shall be lawful for them to appoint what other seal or seals they shall think most meet and

necessary, either for their use, as they are one united body, incorporate here, or for the public use of their government and ministers in New England aforesaid, whereby the said incorporation may or shall seal any manner of instrument touching the same corporation; and the manors, lands, tenants, rents, reversions, annuities, hereditaments, goods, chattels, affairs and any other things belonging unto, or in any wise appertaining, touching or concerning the said council and their successors, or concerning the said corporation and plantation, in and by their own letters-patent, as aforesaid founded, erected and established.

“ And we do further, by these presents, for us, our heirs and successors, grant unto the said council and their successors, for the time being, in their discretions, from time to time, to admit such and so many person and persons to be made free and enabled to trade and traffic unto, within and in New England aforesaid, and unto every part and parcel thereof, or to have powers and enjoy any lands or hereditaments in New England aforesaid, as they shall think fit according to the laws, orders, constitutions and ordinances by the said council and their successors, from time to time, to be made and established, by virtue of and according to the true intent of these presents, and under such conditions, reservations and agreements as the said council shall set down, order and direct and not otherwise.

“ And further, of our special grace, certain knowledge and mere motion, for us, our heirs and successors, we do, by these presents, give and grant full power and authority to the said council, and their successors, that the said council, for the time being, or the greater part of them, shall and may, from time to time, nominate, make, constitute, ordain and confirm by such name or names, style or styles, as to them shall seem good, and, likewise, to revoke and discharge, change and alter, as well all and singular, governors, officers and ministers, which hereafter shall be by them thought fit and needful to be made or used, as well to attend the business of the said company here as for the government of the said colony and plantation.

“And also to make, ordain and establish all manner of orders, laws, directions, instructions, forms and ceremonies of government and magistracy, fit and necessary for and concerning the government of the said colony and plantation, so always as the same be not contrary to the laws and statutes of this our realm of England, and the same at all times hereafter, to abrogate, revoke or change, not only within the precincts of the said colony, but also upon the seas, in going and coming to and from the said colony, as they, in their good discretion, shall think to be fittest for the good of the adventurers and inhabitants there.

“And we do further, of our special grace, certain knowledge and mere motion, grant, declare and ordain that such principal governor as, from time to time, shall be authorized and appointed, in manner and form in these presents heretofore expressed, shall have full power and authority to use and exercise martial laws in cases of rebellion, insurrection and mutiny, in as large and ample a manner as our lieutenants in counties within our realm of England have, or ought to have, by force of their commission of lieutenancy.

“And forasmuch as it shall be necessary for all such our loving subjects as shall inherit within the said precincts of New England aforesaid, to determine to live together in the fear and true worship of Almighty God, Christian peace and civil quietness, each with the other, whereby every one may, with more safety, pleasure and profit, enjoy that, whereunto they shall attain with great pain and peril.

“We, for us, our heirs and successors, are likewise pleased and contented, and, by these presents, do give and grant unto the said council and their successors, and to such governors, officers and ministers as shall be, by said council, constituted and appointed according to the natures and limits of their offices and places respectively, that they shall and may, from time to time, forever hereafter, within the said precincts of New England, or in the way by the seas, thither and from thence, have full and absolute power and authority to correct, punish, pardon, govern and rule all such the subjects of us, our

heirs and successors, as shall, from time to time, adventure themselves in any voyage thither, or that shall, at any time hereafter, inhabit in the precincts and territories of the said colony as aforesaid, according to such laws, orders, ordinances, directions and instructions as by the said council aforesaid shall be established; and, in defect thereof, in cases of necessity, according to the good discretions of the said governors and officers respectively, as well in cases capital and criminal as civil, both marine and others; so, always, as the said statutes, ordinances and proceedings, as near as conveniently may be agreeable to the laws, statutes, government and policy of this our realm of England.

“ And, furthermore, if any person or persons, adventurers or planters of the said colony, or any other, at any time or times hereafter, shall transport any moneys, goods or merchandises out of any our kingdoms, with a pretence and purpose to land, set, or otherwise to dispose of the same within the limits and bounds of the said colony, and yet, nevertheless, being at sea or after he hath landed within any part of the said colony, shall carry the same into any other foreign country, with a purpose there to set and dispose thereof, that then all the goods and chattels of the said person or persons, so offending and transported, together with the ship or vessel wherein such transportation was made, shall be forfeited to us, our heirs and successors.

“ And we do further, of our special grace, certain knowledge and mere motion, for us, our heirs and successors, for and in respect of the considerations aforesaid, and for divers other good causes and considerations, us thereunto especially moving, and by the advice of the lords and others of our said privy council, have absolutely given, granted and confirmed, and, by these presents, do absolutely give, grant and confirm unto the said council, called the Council established at Plymouth, in the county of Devon, for the planting, ruling and governing of New England in America, and unto their successors, forever, all the aforesaid lands and grounds, continent, precincts, place, places and territories (viz. :), the

aforesaid part of America, lying and being in breadth from forty degrees of northerly latitude from the equinoctial line to forty-eight degrees of the said northerly latitude, inclusively, and in length of and within all the breadth aforesaid throughout the main land from sea to sea, together, also, with all the firm land, soils, ground, havens, ports, rivers, waters, fishings, mines and minerals, as well royal mines of gold and silver as other mines and minerals, precious stones, quarries and all and singular other commodities. jurisdictions, royalties, privileges, franchises and pre-eminences, both within the said tract of land upon the main and also within the said island and seas adjoining.

“Provided always, that the said islands, or any of the premises herein before mentioned, and by these presents, intended and meant to be granted, be not actually possessed or inhabited by any other Christian prince or state, nor be within the bounds, limits or territories of that southern colony, heretofore, by us, granted to be planted by divers of our loving subjects in the south parts.

“To have and to hold, possess and enjoy, all and singular, the aforesaid continent, lands, territories, islands, hereditaments and precincts, sea, waters, fishings, with all and all manner their commodities, royalties, liberties, pre-eminences and profits that shall arise from thence, with all and singular their appurtenances and every part and parcel thereof, and of them to and unto the said council and their successors and assigns, forever, to the sole, only and proper use, benefit and behoof of them, the said council and their successors and assigns, forever to be holden of us, our heirs and successors, as of our manor of East Greenwich, in our county of Kent, in free and common socage and not in capite, nor by knights’ services.

“Yielding and paying, therefor, to us, our heirs and successors, the fifth part of the ores of gold and silver which, from time to time, and at all times hereafter, shall happen to be found, gotten and obtained in, at or within any the said lands, limits, territories and precincts, or in or within any

part or parcel thereof, for or in respect of all and all manner of duties, demands and services whatsoever, to be done, made or paid to us, our heirs and successors.

“ And we do further, of our special grace, certain knowledge and mere motion, for us, our heirs and successors, give and grant to the said council and their successors, forever, by these presents, that it shall be lawful and free for them and their assigns, at all and every time and times hereafter, out of any our realm or dominions whatsoever, to take, lead, carry and transport in and into their voyages, and for and towards the said plantation in New England, all such and so many of our loving subjects, or any other strangers that will become our loving subjects and live under our allegiance, or shall willingly accompany them in the said voyage and plantation with shipping, armor, weapons, ordinances, munition, powder, shot, victuals and all manner of clothing, implements, furniture, beasts, cattle, horses, mares and all other things necessary for the said plantation and for their use and defence and for trade with the people there, and in passing and returning to and fro without paying or yielding any custom or subsidy, either inwards or outwards, to us, our heirs or successors for the same, for the space of seven years from the day of the date of these presents.

“ Provided, that none of the said persons be such as shall be hereafter, by special name, restrained by us, our heirs or successors.

“ And, for their further encouragement of our special grace and favor, we do, by these presents, for us, our heirs and successors, yield and grant to and with the said council, and their successors, and every of them, their factors and assigns, that they and every of them shall be free and quiet from all subsidies and customs in New England for the space of seven years. and from all taxes and importations for the space of twenty and one years, upon all goods or merchandise, at any time or times hereafter, either upon importation thither or exportation from thence into our realm of England, or into any other our dominions by the said council and their

successors, their deputies, factors and assigns, or any of them, except only the five pounds per cent. due for custom upon all such goods and merchandises, as shall be brought or imported into our realm of England or any other of our dominions, according to the ancient trade of merchants; which five pounds per centum only being paid, it shall be thenceforth lawful and free for the said adventurers, the same goods and merchandise, to export and carry out of our said dominions into foreign parts, without any custom, tax or other duty, to be paid to us, our heirs and successors. Provided that the said goods and merchandises be shipped out within thirteen months after their first landing, within any part of these dominions.

“And further, our will and pleasure is, and we do, by these presents, charge, command, warrant and authorize the said council and their successors, or the major part of them, which shall be present and assembled for that purpose, shall from time to time, under their common seal, distribute, convey, assign and set over such particular portions of lands, tenements and hereditaments as are, by these presents, formerly granted unto each our loving subjects, naturally born, or denizens, or others, as well adventurers or planters, as by the said company, upon a commission of survey and distribution, executed and returned for that purpose, shall be named, appointed and allowed, wherein our will and pleasure is that respect be had, as well to the proportion of the adventurers as to the special service, hasard, exploit or merit of any person so to be recompensed, advanced or rewarded.

“And we do also, for us, our heirs and successors, grant to the said council and their successors, and to all and every such governors, or other officers or ministers as by the said council shall be appointed, to have power and authority of government and command in or over the said colony and plantation, that they, and every of them, shall, and lawfully may, from time to time, and at all times hereafter, forever, for their several defence and safety, encounter, expulse, repel and resist by force of arms, as well by sea as by land, and

all means and ways whatsoever, all such person and persons as, without the special license of the said council and their successors, or the greater part of them, shall attempt to inhabit within the said several precincts and limits of the said colony and plantation.

“ And also, all and every such person and persons whatsoever as shall enterprise or attempt, at any time hereafter, destruction, invasion, detriment or annoyance to the said colony and plantation.

“ And that it shall be lawful for the said council and their successors, and every of them, from time to time, and at all times hereafter, and they shall have full power and authority to take and suppress, by all ways and means whatsoever, all and every such person or persons whatsoever, with the ships, goods and other furniture, trafficking in any harbor, creek or place within the limits and precincts of the said colony and plantation, and not being allowed by the said council to be adventurers or planters of the said colony.

“ And of our further royal favor, we have granted, and for us, our heirs and successors, we do grant unto the said council and their successors, that the said territories, lands, rivers and places aforesaid, or any of them, shall not be visited, frequented or traded into by any other of our subjects, or the subjects of us, our heirs and successors, either from any of the ports and havens belonging or appertaining or which shall belong or appertain unto us, our heirs or successors, or to any foreign prince, state or potentate whatsoever.

“ And therefore, we do hereby, for us, our heirs and successors, charge, command, prohibit and forbid all the subjects of us, our heirs and successors, of what degree or quality soever they be, that none of them, directly or indirectly, presume to visit, frequent, trade or adventure to traffic into or from the said territories, lands, rivers and places aforesaid, or any of them, other than the said council and their successors, factors, deputies and assigns, unless it be with the license and consent of the said council and company, first had and obtained in writing, under the common seal,

upon pain of our indignation and imprisonment of their bodies during the pleasure of us, our heirs or successors, and the forfeiture and loss, both of their ship and goods, wheresoever they shall be found, either within any of our kingdoms or dominions, or any of the place or places out of our dominion, and for the better effecting of our said pleasure herein, we do hereby, for us, our heirs and successors, give and grant full power and authority unto the said council and their successors, for the time being, that they by themselves, their factors, deputies or assigns, shall and may, from time to time, and at all times hereafter, attach, arrest, take and seize all and all manner of ships, goods, wares and merchandise whatsoever, which shall be brought from or carried to the places before mentioned, or any of them, contrary to our own will and pleasure, before in these presents expressed, the moiety or one-half of all which forfeitures, we do hereby, for us, our heirs and successors, give and grant unto the said council and their successors, to their own proper use, without accompt, and the other moiety, or half part thereof, we will, shall be and remain to the use of us, our heirs and successors.

“ And we likewise have condescended and granted, and, by these presents, for us, our heirs and successors, do condescend and grant to and with the said council and their successors, that we, our heirs or successors, shall not, or will not, give and grant liberty, license or authority to any person or persons whatsoever, to sail, trade or traffic unto the aforesaid plantations of New England, without the good will and liking of the said council, or the greater part of them for the time being, at any their courts to be assembled.

“ And we do, for us, our heirs and successors, give and grant unto the said council, and their successors, that whensoever or so often as any custom or subsidy shall grow due or payable unto us, our heirs or successors, according to the limitation and appointment aforesaid, by reason of any goods, wares or merchandise, to be shipped out, or any return to be made of any goods, wares or merchandise, unto or from New

England, or any the lands or territories aforesaid, that then so often, and in such case, the farmers, customers and officers of our customs of England and Ireland, and every of them, for the time being, upon request made unto them by the said council, their successors, factors or assigns, and upon convenient security to be given in that behalf, shall give and allow unto the said council and their successors, and to all person and persons free of the said company as aforesaid, six months' time for the payment of the one-half of all such customs and subsidy as shall be due and payable unto us, our heirs and successors, for the same, for which these, our letters patents or the duplicate, or the enrolment thereof, shall be unto our said officers a sufficient warrant and discharge.

Nevertheless, our will and pleasure is, that if any of the said goods, wares and merchandises, which be, or shall be at any time hereafter, landed and exported out of any our realms aforesaid, and shall be shipped with a purpose not to be carried to New England aforesaid, that then such payment, duty, custom, importation or forfeiture shall be paid and belong to us, our heirs and successors, for the said goods, wares and merchandises so fraudulently sought to be transported, as if this our grant had not been made nor granted.

“ And we do, for us, our heirs and successors, give and grant unto the said council and their successors forever, by these presents, that the said president of the said company, or his deputy, for the time being, or any two others of the said council for the said colony in New England, for the time being, shall and may, at all times hereafter, and from time to time, have full power and authority to minister and give the oath and oaths of allegiance and supremacy, or either of them, to all and every person and persons which shall, at any time and times hereafter, go and pass to the said colony of New England.

“ And further, that it shall be likewise lawful for the said president, or his deputy for the time being, or any two others of the said council for the said colony in New England, for the time being, from time to time, and at all times hereafter,

to minister such a formal oath, as by their discretions shall be reasonably derived, as well unto any person or persons employed, or to be employed in, for or touching the said plantation, for the honest, faithful and just discharge of their service in all such matters as shall be committed unto them, for the good and benefit of the said company, colony and plantation, as also unto such other person or persons as the said president or his deputy, with two others of the said council, shall think meet for the examination or clearing of the truth, in any case whatsoever concerning the said plantation, or any business from thence proceeding or thereunto belonging.

“ And to the end that no lewd or ill-disposed persons, sailors, soldiers, artificers, husbandmen, laborers or others which shall receive wares, apparel or other entertainment from the said council, or contract and agree with the said council to go and to serve and to be employed in the said plantation in the colony in New England, do afterwards withdraw, hide and conceal themselves, or refuse to go thither after they have been so entertained and agreed withal, and that no persons which shall be sent and employed in the said plantation of the said colony in New England, upon the charge of the said council, do misbehave themselves by mutinous, seditious or other notorious misdemeanors, or which shall be employed or sent abroad by the Governor of New England, or his deputy, with any ship or pinnace, for provision of the said colony, or for some discovery, or other business and affairs concerning the same, do from thence treacherously either come back again, or return into the realm of England by stealth, or without license of the Governor of the said colony in New England for the time being, or be sent thither as misdoers, or offenders and that none of those persons, after their return from thence, being questioned by the said council here for such their misbehaviors and offences, do, by insolent and contemptuous carriage, in the presence of the said council, show little respect and reverence, either to the place or authority in which we have placed

and appointed them and others for the clearing of their lewdness and misdemeanors committed in New England, divulge vile and slanderous reports of the country of New England, or of the government or state of the said plantation and colony, to bring the said voyagers and plantation into disgrace and contempt, by means whereof not only the adventurers and planters already engaged in the said plantation may be exceedingly abused and hindered, and a great number of our loving and well-disposed subjects, otherwise well affected and induced to join and adventure in so noble a Christian and worthy an action, may be discouraged from the same, but also the enterprise itself, may be overthrown, which cannot miscarry without dishonor to us and our kingdom.

“ We, therefore, for preventing of so great and enormous abuses and misdemeanors, do, by these presents, for us, our heirs and successors, give and grant unto the said president or his deputy, or such other person or persons as, by the orders of the said council, shall be appointed by warrant under his or their hand or hands, to send for or cause to be apprehended, all and every such person and persons who shall be noted, or accused, or found at any time or times hereafter to offend or misbehave themselves in any the affairs before mentioned and expressed, and, upon the exoneration of any such offender or offenders, and just proof made by oath, taken before the said council, of any such notorious misdemeanors by them to be committed, as aforesaid, and also upon any insolent, contemptuous or unreverent carriage, or misbehavior, to or against the said council, to be showed or used by such person or persons so called, convinced and appearing before them, as aforesaid, that in all such cases our said council, or any two or more of them, for the time being, shall and may have full power and authority either here to bind them over with good security for their good behaviour, and further therein to proceed, to all intents and purposes, as it is used in other like cases within our realm of England, of else, at their discretions, to remand and send back the said offenders,

or any of them, to the said colony of New England, there to be proceeded against and punished as the Governor, deputy or council there, for the time being, shall think meet, or otherwise, according to such laws and ordinances as are, and shall be, in use there for the well ordering and good government of the said colony.

“And our will and pleasure is, and we do hereby declare to all Christian kings, princes and states that if any person or persons which shall hereafter be of the said colony or plantation, or any other, by license or appointment of the said council, or their successors, or otherwise, shall, at any time or times hereafter, rob, or spoil, by sea or by land, or do any hurt, violence or unlawful hostility to any of the subjects of us, our heirs or successors, or any of the subjects of any king, prince, ruler, or governor, or state, being then in league and amity with us, our heirs and successors, and that upon such injury, or upon just complaint of such prince, ruler, governor or state, or their subjects, we, our heirs or successors, shall make open proclamation within any of the parts of our realm of England, commodious for that purpose, that the person or persons having committed any such robbery or spoil shall, within the time limited by such a proclamation, make full restitution or satisfaction of all such injuries done, so as the said princes, or others, so complaining, may hold themselves fully satisfied and contented; and if that the same person or persons, having committed such robbery or spoil, shall not make, or cause to be made, satisfaction accordingly, within such time so to be limited, that then it shall be lawful for us, our heirs and successors, to put the said person or persons out of our allegiance and protection, and that it shall be lawful and free for all princes to prosecute with hostility the said offenders, and every of them, their and every of their procurers, aiders, abettors and comforters in that behalf.

“Also, we do, for us, our heirs and successors, declare by these presents, that all and every the persons being our subjects, which shall go and inhabit within the said colony and

plantation, and every of their children and posterity which shall happen to be born within the limits thereof, shall have and enjoy all liberties and franchises and immunities of free denizens and natural subjects, with any of our other dominions, to all intents and purposes, as if they had been abiding and born within this our kindom of England, or any other our dominions.

“And lastly, because the principal effect which we can desire or expect of this action is the conversion of and reduction of the people in those parts unto the true worship of God and Christian religion, in which respect we would be loth that any person should be permitted to pass that we suspected to affect the superstition of the church of Rome, we do hereby declare that it is our will and pleasure that none be permitted to pass in any voyage, from time to time to be made into the said country, but such as shall first have taken the oath of Supremacy, for which purpose we do, by these presents give full power and authority to the president of the said council to tender and exhibit the said oath to all such persons as shall at any time be sent and employed in the said voyage.

“And we also for us, our heirs and successors do covenant and grant to and with the council and their successors by these presents, that if the council for the time being, and their successors or any of them, shall at any time or times hereafter, upon any doubt which they shall conceive concerning the strength or validity in law of this our present grant or be desirous to have the same renewed and confirmed by us our heirs and successors, with amendmets of such imperfections and defects as shall appear fit and necessary to the said council or their successors to be reformed and amended, on the behalf of us, our heirs and successors, and for the furthering of the plantation and government, or the increase, continuing and flourishing thereof, that then, upon the humble petition of the said council, for the time being and their successors, shall and will forthwith, make and pass under the

great seal of England, to the said council and their successors, such further and better assurance of all and singular the lands, grounds, royalties, privileges and powers aforesaid granted or intended to be granted, according to our true intent and meaning, and these our letters patents, signified, declared or mentioned, as by the learned council of us, our heirs and successors, and of the said company and their successors, shall, in that behalf, be reasonably devised or advised.

“And further, our will and pleasure is, that in all questions and doubts, that shall arise upon any difficulty of construction or interpretation of anything contained in these letters patents, the same shall be taken and interpreted in most ample and beneficial manner, for the said council and their successors, and every member thereof.

“And we do further, for us, our heirs and successors, charge and command all and singular admirals, vice admirals, generals, commanders, captains, justices of peace, mayors, sheriffs, bailiffs, constables, customers, comptrollers, waiters, searchers and all the officers of us, our heirs and successors whatsoever to be, from time to time and all times hereafter, in all things aiding, helping and assisting unto the said council and their successors, and unto every of them, upon request and requests, by them to be made, in all matters and things, for the furtherance and accomplishment of all or any the matters and things by us, in and by these our letters patents, given, granted and provided, or by us meant or intended to be given, granted and provided, as they, our said officers and the officers of us, our heirs and successors, do tender our pleasure, and will avoid the contrary at their perils.

“And also, we do, by these presents, ratify and confirm unto the said council and their successors all privileges, franchises, liberties and immunities granted in our said former letters patents and not in these our letters patents, revoked, altered, changed or abridged, although expressed mentioned.

etc. In witness, etc., witness ourself at Westminster the third day of November in the eighteenth year of our reign over England, etc.

“Par Breve de Privato Segillo, etc.

“This is a true copy from the original record remaining in the Chapel of the Rolls, having been examined.

“HEN ROOKE,
“Clerk of the Rolls.”

APPENDIX

B.

FIRST PLYMOUTH COLONY PATENT.

“This Indenture made the first day of June, 1621, And in the years of the raigne of our soveraigne Lord James by the grace of god King of England Scotland Fraunce and Ireland defendor of the faith &c That is to say of England Fraunce and Ireland the nynetenth and of Scotland the four and fiftieth Betwene the President and Counsell of New England of the one ptie And John Peirce Citisen and Cloth-worker of London and his Associates of the other ptie Witnesseth that whereas the said John Peirce and his Associates have already transported and undertaken to transporte at their cost and charges themselves and dyver's pson's into New England and there to erect and build a Towne and settle dyvers Inhabitants for the advancement of the generall plantacon of that Country of New England now the Sayde President and Counsell in consideracon thereof and for the furtherance of the said plantacon and incoragement of the said Undertakers have agreed to grant assigne allott and appoynt to the said John Peirce and his associates and every of them his and their heires and assignes one hundred acres of ground for evry pson so to be transported besides dyvers pryviledges Liberties and commodytees hereafter menconed, And to that intent they have granted allotted assigned and confirmed And by their presents doe grant allott assign and confirme unto the said John Peirce and his Associates his and their heires & assignes and the heires & assignes of evry of them sevrally and respectyvelle one hundred sevrall acres of ground in New England for evry pson so transported or to be transported yf the said John Peirce or his Associates

contynue there three whole yeers either at one or severall tymes or dye in the meane season after he or they are shipped with intent there to inhabit. The same land to be taken & chosen by them their deputies or assignes in any place or place wheresoever not already inhabited by any English and where no English pson or psons are already placed or settled or have by order of said President and Councell made choyce of nor within Tenn myles of the same unless it be on the opposite syde of some great or Navigable Ryver to the former particular plantacon together with the one half of the Ryver or Ryvers that is to say to the middest thereof as shall adjoyne to such lands as they shall make choyce of together with all such Liberties pryvileges profitts & comodyties as the said Land and Ryvers which they shall make choyce of shall yield together with free libertie to fish on and upon the coast of New England and in all havens ports and creeks Thereunto belonging and that no pson or psons whatsoever shall take any benefitt or libertie of or to any of the grounds or the one half of the Ryvers aforesaid excepting the free use of highways by land and Navigable Ryvers but that the said undertakers and planters their heires and assignes shall have the sole right and use of the said grounds and the one half of the said Ryvers with all their profitts and appurtenances. *And* for as much as the said John Peirce and his associates intend and have undertaken to build Churches, Schooles, Hospitalls Town Houses, Bridges and such like Workes of charytie. As also for the maynteyning of Magistrates and other inferior officers in regard whereof and to the end that the said John Peirce and his Associates his and their heires and assignes may have wherewithall to beare & support such like charges *Therefore* the said President and Councill aforesaid do graunt unto the said Undertakers their heirs & assignes Fifteene hundred acres of Land moreover and above the aforesaid possescon of one hundred the pson for evry Undertaker and planter to be ymployed upon such public usis as the said Undertakers & Planters shall thinck fitt, *And* they do further graunt unto the said John Peirce

and his Associates their heires and assigns that for evry pson that they or any of them shall transport at their owne proper costs & charges into New England either unto the Lands hereby graunted or adjoyninge to them within seaven years after the feast of St. John Baptist next comeing yf the said pson transported contynue there three whole years either at one or severall tymes or dye in the meane seasin after he is shipped with intent there to inhabit that the said pson or psons that shall so at his or their owne charges transport any other shall have graunted and allowed to him and them and his & their heirs respectyvelie for evry pson so transported or dyeing after he is shipped one hundred acres of Land and also that evry pson or psons who by contract & agreament to be had & made with the said Undertakers shall at his or their own charge transport him & themselves or any others and setle and plant themselves in New England within the said seaven yeeres for three yeeres space as aforesaid or dye in the meane tyme shall have graunted & allowed unto evry pson so transporting or transported and their heires and assignes respectyvelie the lik number of one hundred acres of Land as aforesaid the same to be by him & them or their heires or assignes chosen in any entyre place together and adjoyning to the aforesaid Lands and not straglingly not before the tyme of such choyce made possessed or inhabited by any English Company or within tenne myles of the same except it be on the opposite syde of some great Navigable Ryver as aforesaid. *Yielding* and paying unto the said President and Counsell for every hundred acres so obteyned and possessed by the said John Peirce and his said Associates and by those said other psons and their heires & assignes who by contract as aforesaid shall at their onne charges transport themselves or others the Yerely rent of two shillings at the feast of St. Michael Tharchaungell to the hand of the Rent gatherer of the President & Counsell and their successors forever the first payment to begyn after the xperacon of the first seaven yeeres next after the date hereof And further it shall be lawful to and for the said John Peirce

and his associates and such as contract with them as aforesaid their Tennants & servants upon dislike of one in the country to returne for England or elsewhere with all their goods & chattells at their will & pleasure without lett or disturbance of any paying all debts that justly shal be demanded *And* likewise it shall be lawful and is granted to and for the said John Peirce his Associates & Planters their heires & assignes their Tennants & servants and such as they or any of them shall contract with as aforesaid and send and ymploy for the said plantacon to goe & returne trade traffig import and transport their goods & merchandise at their will & pleasure into England or elsewhere paying only such duties to the King's majestie his heirs & successors as the President & Counsell of New England doe pay without any other taxes imposicons burthens or restraints whatsoever upon them to be ymposed the rent hereby reserved being only excepted. *And* it shall be lawfull for the said Undertakers & Planters their heires & successors freely to truck trade & traffig with the salvages in New England or neighboring thereabouts at their wills and pleasures without lett or disturbance, As also to have libertie to hunt hauke fish or fowle in any place or places not now or hereafter by the English inhabited. *And the said* President & Counsell do covenant & promyse to and with the said John Peirce and his Associates and others contracted with as aforesaid his and their heires & assignes. That upon Lawfull survey to be had & made at the charge of the said Undertakers & Planters and lawfull informacon given of the bounds meets and quantytee of Land so as aforesaid to be by them chosen & possessed they the said President & Counsell upon surrender of this presente graunt and Indenture and upon reasonable request to be made by the said Undertakers & Planters their heires & assignes within seaven yeeres now next coming shall and will by their Deed Indented and under their Comon Seale graunt enfeoffe and confirme all and evry the said lands so sett out and bordered as aforesaid to the said John Peirce and his associates and such as contract with

them their heirs & assignes in as large and beneficeall manner as the same are in these presence graunted or intended to be graunted to all intents & purposes with all and every particular priviledge & freedome reservaceon & condicon with all dependacis herein specyfyed & graunted. And shall also at any tyme within the said terme of Seaven Yeeres upon request unto the said President & Counsell make graunt unto them the said John Peirce and his Associates Undertakers & Planters their heires & assignes Letters & Graunts of Incorporacon by some usual and fitt name & tyle with Liberty to them and their successors from tyme to tyme to make orders Lawes ordynaunces & constitucons for the rule government ordering & dyrectory of all psons to be transported & settled upon the lands hereby graunted intended to be graunted or hereafter to be graunted and of the said Lands & Proffitts thereby arrysing. And in the meane tyme untill such graunt made yt shal be lawfull for the said John Peirce his Associates & Undertakers & Planters their heirs & assignes by consent of the greater part of them To establish such lawes & ordynauncis as are for their better government and the same by such officer or officers as they shall by most voyces elect & choose to put in execucon. And lastly the said President & Counsell do graunt and agree to and with the said John Peirce and his Associates and others contracted with and ymployed as aforesaid their heires and assignes That when they have planted the Lands hereby to them assigned & appoynted That then it shal be lawfull for them with the pryvitie & allowance of the President & Counsell as aforesaid to make choyce of to enter into and to have an addition of fiftee acres more for evry pson transported into New England with like reservacons conditions and priviledges as are above graunted to be had and chosen in such place or places where no English shal be then settled or inhabiting or have made choyce of and the same entered into a Book of Acts at the tyme of such choyce is to be made or within tenne miles of the same excepting on the opposite syde of some great navigable River as aforesaid. And it

shall and may be lawfull for the said John Peirce and his Associates their heires & assignes from tyme to tyme and at all tymes hereafter for their severall defence and savetie to encounter repulse repell & resist by force of Armes as well by Sea as by Land and by all wayes and meanes whatsoever all such pson and psons as without the especial lycense of the said President or Counsell and their successors or the greater part of them shall attempt to inhabit within the several presentes and lymitts of their said Plantacon; or shall enterpryse or attempt at any time hereafter destruccoon In-vation detryment or annoyance to the said Plantacon. *And the said* John Peirce and his Associates and their heires & assignes do covenant & promyse to & with the said President & Counsell and their successors That they the said John Peirce and his Associates from tyme to tyme during the said Seaven Yeeres shall make a true Certificate to the said President & Counsell and their successors from the chief officers of the places respectyvely of evry pson transported & landed in New England or shipped as aforesaid to be entered by the Secretary of the said President & Counsell into a Register book for that purpose to be kept *And* the said John Peirce and his Associates jointly and severally for them their heires & assignes do covenant promyse & graunt to and with the said President & Counsell and their successors That the psons transported to this their particular Plantacon shall apply themselves & their Labors in a large & competent manner to the planting setting making & procuring of goods & staple commodityties in & upon the said Land hereby graunted unto them as corne & silkgrane hemp flax pitch and tarre sopeashes and potashes yron clapboard and other like materealls. *In Witness* whereof the said President & Counsell have to the one part of the present Indenture sett their seales. And to the other part hereof the said John Peirce in the name of himself and his said Associates have sett to his seale given the day and yeeres first above written."

APPENDIX

C.

SECOND PLYMOUTH COLONY PATENT.

“ To all to whom these presents shall come, greeting :

“ Whereas our late sovereign lord King James for the advancement of a colony and plantation in the country called or known by the name of New England, in America, by his highness letters patents under the great seal of England, bearing date at Westminster the third day of November, in the eighteenth year of his highness reign of England, &c did give, grant and confirm unto the right honorable Lodowicke, late lord duke of Lenox ; George, late lord marquis of Buckingham ; James marquis Hamilton ; Thomas earl of Arundell ; Robert earl of Warwick ; and Ferdinand Gorges knight, and divers others whose names are expressed in the said letters patents, and their successors. that they should be one body politic and corporate, perpetually consisting of forty persons and that they should have perpetual succession and one common seal to serve for the said body, and that they and their successors should be incorporated, called and known by the name of the council established at Plymouth, in the County of Devon, for the planting, ruling, ordering and governing of New England in America, and also of his special grace, certain knowledge and mere motion, did give, grant and confirm unto the said president and council and their successors, forever, under the reservations, limitations and declarations in said letters patents expressed all that part and portion of the said country now called New England, in America, situate, lying and being in breadth from forty degrees of northerly latitude from the equinoctial line to forty-eight degrees of the said northerly latitude inclusively

and in length of and in all the breadth aforesaid throughout the mainland from sea to sea, together also with all the farm lands, soils, grounds, creeks, inlets, havens, ports, seas, rivers, islands, waters, fishings, mines and minerals, precious stones, quarries and all and singular, the commodities jurisdictions, royalties, privileges, franchises and preliminaries, both within the said tract of land upon the main as also within the said islands and seas adjoining: To have, hold, possess and enjoy all and singular the aforesaid continent, lands, territories, islands, hereditaments and precincts, sea waters, fishings with all and all manner their commodities, royalties, privileges, preliminaries and profits that shall arise from thence with all and singular their appurtenances, and every part and parcel thereof unto the said council and their successors and assigns forever: To be holden of his Majesty, his heirs and successors, as of his manor of East Greenwich, in the County of Kent, in free and common socage and not in capite nor by knights service yielding and paying therefor to the said late King's majesty his heirs and successors, the fifth part of the ore of gold and silver which from time to time and at all times from the date of the said letters patents shall be there gotten, had and obtained for and in respect of all and all manner of duties, demands and services whatsoever to be done, made and paid unto his said late Majesty, his heirs and successors, as in and by the said letters patents amongst sundry other privileges and matters therein contained more fully and at large, it doth and may appear. Now know ye that the said council by virtue and authority of his said late Majestie's letters patents, and for and in consideration that William Bradford and his associates have for these nine years lived in New England aforesaid, and have there inhabited and planted a town called by the name of New Plymouth, at their own proper costs and charges: And now seeing that by the special providence of God and their extraordinary care and industry they have increased their plantation to near three hundred people, and are upon all occasions able to relieve any new

planters or others his Majestie's subjects who may fall upon that coast; have given, granted, bargained, sold, enfeoffed, allotted, assigned and set over, and by these presents do clearly and absolutely give, grant, bargain, sell, alien, enfeoffe, allot, assign and confirm unto the said William Bradford, his heirs, associates and assigns all that part of New England in America aforesaid, and tract and tracts of land that lie within or between a certain rivolet or rundlett there commonly called Coahassitt, alias Conabasett towards the North, and the river commonly called Naragansetts river towards the South; and the great western ocean towards the East and between and within a straight line directly extending up into the main land towards the West from the mouth of the said river called Naragansetts river to the utmost limits and bounds of a country or place in New England called Pokenacutt alias Sowamsett, westward and another like straight line extending itself directly from the mouth of the said river called Coahassett alias Conahassett, towards the West, so far up into the main land westwards as the utmost limits of the said place or country commonly called Pokenacutt, alias Sowamsett do extend together with one half of the said river called Naragansetts, and the said rivolet or rundlett called Coahassett, alias Conahassett and all lands, rivers, waters, havens, creeks, ports, fishings, fowlings and all hereditaments, profits, commodities and emoluments whatsoever situate, lying and being or arising within or between the said limits and bounds or any of them. And for as much as they have no convenient place either of trading or fishing within their own precincts whereby (after so long travel and great pains) so hopeful a plantation may subsist as also that they may be encouraged the better to proceed in so pious a work which may especially tend to the propagation of religion and the great increase of trade to his Majestie's realms and advancement of the public plantation. The said council have further given, granted, bargained, sold, enfeoffed, allotted, assigned and set over and by these presents do clearly and absolutely give, grant, bargain, sell, alien, enfeoffe, allot,

assign and confirm unto said William Bradford, his heirs, associates and assigns all that tract of land within or between and extendeth itself from the utmost limit of Cobbinsconte alias Comasee-conte which adjoineth to the river of Kenebeke alias Kenebekike, towards the western ocean and a place called the falls at Megamkike in America aforesaid and the space of fifteen English miles on each side of the said river called Kenebek, that lies within the said limits and bounds eastward, westward, northward or southward last above mentioned, and all lands, grounds, soils, rivers, waters, fishings, hereditaments and profits whatsoever situate, lying and being, arising, happening or accruing or which shall arise, happen or accrue in or within the said limits and bounds or either of them together with free ingress, egress and regress, with ships, boats, shallops and other vessels from the sea commonly called the western ocean to the said river called Kennebek and from the said river to the said western ocean together with all prerogative rights, royalties, jurisdictions, privileges, franchises, liberties and immunities and also marine liberty with the escheats and casualties thereof, the Admiralty Jurisdiction excepted, with all the interest, right, title, claim and demand whatsoever which the said council and their successors now have or ought to have and claim or may have and acquire hereafter in or to any the said parcels or tracts of land hereby mentioned to be granted or any the premises in as free, large, ample and beneficial manner to all intents, constructions and purposes whatsoever, as the said council by virtue of his Majestie's said letters patents may or can grant; to have and to hold the said tract and tracts of land and all and singular the premises above mentioned to be granted with them and every of their appurtenances to the said William Bradford, his heirs, associates and assigns forever. Yielding and paying unto our said Sovereign Lord the King, his heirs and successors forever, one fifth part of the ore of the mines of gold and silver and one other fifth part thereof to the president and council which shall be had, possessed and obtained within the precincts aforesaid, for all services and demands whatsoever.

And the said council do further grant and agree to and with the said William Bradford his heirs, associates and assigns and every of them, his and their factors, agents, tenants and servants and all such as he or they shall send and employ about his particular plantation shall and may from time to time freely and lawfully go and return, trade and traffick as well with the English as any of the natives within the precincts aforesaid, with liberty of fishing upon any part of the sea coast and sea shores of any of the seas or islands adjacent and not being inhabited or otherwise disposed of, by order of the said president and council; also to import, export and transport their goods and merchandise at their wills and pleasures paying only such duty to the King's Majestie, his heirs and successors as the said president and council do or ought to pay without any other taxes, impositions, burdens and restraint upon them to be imposed. And further the said council do grant and agree to and with the said William Bradford, his heirs, associates and assigns that the persons transported by him or any of them shall not be taken away, employed or commanded either by the governor for the time being of New England or by any other authority there from the business and employment of the said William Bradford and his associates, his heirs and assigns. Necessary defence of the country, preservation of the peace, suppressing of tumults within the land, trials in matters of justice by appeals upon special occasion only excepted. Also it shall be lawful and free for the said William Bradford, his associates, his heirs and assigns at all times hereafter to incorporate by some usual or fit name and title him or themselves or the people there inhabiting under him or them with liberty to them and their successors from time to time to frame and make orders, ordinances and constitutions as well for the better government of their affairs here and the recovering or admitting any to his or their society as also for the better government of his or their people and affairs in New England or his and their people at sea in going thither or returning from thence and the same to put in execution or cause to be put in execu-

tion by such officers and ministers as he and they shall authorize and depute. Provided that the said laws and orders be not repugnant to the laws of England or the frame of government by the said president and council hereafter to be established. And further it shall be lawful and free for the said William Bradford, his heirs, associates and assigns to transport cattle of all kinds; also powder, shot, ordnance and munition, from time to time as shall be necessary for their strength and safety hereafter for their several defence; to encounter, expulse, repel and resist by force of arms, as well by sea as by land by all ways and means whatsoever. And by virtue of the authority to us derived by his late Majestie's letters patent to take, apprehend, seize and make prise of all such persons, their ships and goods as shall attempt to inhabit or trade with the savage people of that country within the several precincts and limits of his and their several plantation or shall interfere or attempt at any time destruction, invasion, detriment or annoyance to his and their said plantation; the one moiety of which goods so seized and taken it shall be lawful for the said William Bradford, his heirs, associates and assigns to take to their own use and behoof; the other moiety thereof to be delivered by the said William Bradford, his heirs, associates and assigns to such officer and officers as shall be appointed to receive the same for his Majestie's use. And the said council do hereby covenant and declare that it is their intent and meaning for the good of the plantation that the said William Bradford, his associates, his or their heirs or assigns, shall have and enjoy whatsoever privilege or privileges of what kind soever as are expressed or intended to be granted in and by his said late Majestie's letters patent and that in as large and ample manner as the council thereby now may or hereafter can grant, coining of money excepted. And the said council for them and their successors do covenant and grant to and with the said William Bradford, his heirs, associates and assigns by these present that they, the said council shall at any time hereafter upon request at the only proper costs and charges of the said Wil-

liam Bradford, his heirs, associates and assigns do make, suffer, execute and willingly convert unto any further act or acts, conveyance or conveyances, assurance or assurances, whatsoever for the good and perfect investing, assuring and conveying and sure making of all the aforesaid tract and tracts of land, royalties, mines, minerals, woods, fishings and all singular their appurtenances unto the said William Bradford his heirs, associates and assigns as by him or them or his or their heirs or his or their counsel, learned in the law, shall be devised, advised and required. And lastly know ye that we the said council have made, constituted, deputed, authorized and appointed Captain Miles Standish or in his absence Edward Winslow, John Howland and John Alden or any of them to be our true and lawful attorney and attorneys jointly and severally in our name and stead to enter into the said tract and tracts of land and other the premises with their appurtenances or into some part thereof in the name of the whole for us and in our names to take possession and seizin thereof or of some part thereof in the name of the whole had and taken; then for us and in our names to deliver the full and peaceable possession of seizin of all and singular the said mentioned to be granted premises unto the said William Bradford his heirs, associates and assigns or to his or their certain attorney or attorneys in that behalf, ratifying, allowing and confirming all, whatsoever our said attorney do in or about the premises. In witness, whereof, the said council established at Plymouth in the county of Devon for the planting, ruling, ordering and governing of New England in America have hereunto put their seals the thirteenth day of January in the fifth year of the reign of our Sovereign Lord Charles, by the grace of God, King of England, Scotland, France and Ireland, defenders of the faith &c., Anno Domi. 1629.

[Seal]

“R. WARWICK.”

APPENDIX

D.

CHARTER OF THE COLONY OF MASSACHUSETTS BAY.

“ Charles by the Grace of God, King of England, Scotland and Ireland, Defender of the Faith, etc. To all to whom these presents shall come, Greeting : Whereas our most dear and royal father King James of blessed memory by his Highness’ letters patents bearing date at Westminster, the third day of November, in the eighteenth year of his reign hath given and granted unto the Council established at Plymouth in the County of Devon for the planting, ruling, ordering and governing of New England in America, and to their successors and assigns forever, all that part of America lying and being in breadth from forty degrees of Northerly latitude from the equinoctial line to forty-eight degrees of the said Northerly latitude inclusively, and in length of and within all the breadth aforesaid throughout the main lands from sea to sea, together also with all the farm lands, soils, grounds, havens, ports, rivers, waters, fisheries, mines and minerals, precious stones, quarries and all and singular other commodities, jurisdictions, royalties, privileges, franchises and pre-eminences, both within the said tract of land upon the main and also within the islands and seas adjoining : Provided always that the said islands or any the premises by the said letters patents intended and meant to be granted, were not then actually possessed or inhabited by any other Christian Prince or state nor within the bounds, limits or territories of the Southern Colony then before granted by our said dear father to be planted by divers of his loving subjects in the South parts. To have and to hold, possess and enjoy all and singular the aforesaid continent, lands, territories, islands, heredita-

ment sand precincts, seas, waters, fishings, with all and all manners, their commodities, royalties, liberties, pre-eminences and profits that should from thenceforth arise from thence with all and singular their appurtenances and every part and parcel thereof unto the said Council and their successors and assigns forever. To the sole and proper use, benefit and behoof of them the said Council and their successors and assigns forever. To be holden of our said most dear and royal father, his heirs and successors as of his manor of East Greenwich in the County of Kent in free and common socage and not *in capite* nor by knights service yielding and paying therefor to the said late King his heirs and successors the fifth part of the ore of gold and silver which should from time to time and at all times there after happen to be found, gotten, had and obtained in, at or within any of the said lands, limits, territories and precincts or in or within any part or parcel thereof for or in respect of all and all manner of duties, demands and services whatsoever to be done, made or paid to our said dear father the late King, his heirs and successors as in and by the said letters patent (amongst sundry other clauses, powers, privileges and grants therein contained) more at large appeareth : And whereas the said Council established at Plymouth in the County of Devon for the planting, ruling, ordering and governing of New England in America have by their deed indented under their common seal bearing date the nineteenth day of March last past in the third year of our reign, given, granted, bargained, sold, enfeofed, aliened and confirmed to Sir Henry Rosewell, Sir John Young, Knights, Thomas Southcott, John Humphrey, John Endicott and Simon Whetcombe, their heirs and associates forever. All that part of New England in America aforesaid which lies and extends between a great river there commonly called Monomack alias Merrimack and a certain other river there called Charles River, being in the bottom of a certain bay there commonly called Massachusetts alias Mattachusetts alias Massatusetts bay, and also all and singular those lands and hereditaments whatsoever lying within

the space of three English miles on the South part of the said Charles River or of any or every part thereof ; And also all and singular the lands and hereditaments whatsoever lying and being within the space of three English miles to the Southward of the Southermost part of the said bay called Massachusetts alias Mattachusetts alias Massatusetts bay and also all those lands and hereditaments whatsoever which lie and be within the space of there English miles to the Northward of the said river called Monomack alias Merrimack, or to the Northward of any and every part thereof ; And all lands and hereditaments whatsoever lying within the limits aforesaid North and South, in latitude and breadth and in length and longitude of and within all the breadth aforesaid throughout the main lands there from the Atlantic and western sea and ocean on the east part to the south sea on the west part and all lands and grounds, place and places, soils, woods and wood grounds, havens, ports, rivers, waters, fishings and hereditaments whatsoever lying within the said bounds and limits and every part and parcel thereof ; And also all islands lying in America aforesaid in said seas or either of them or the western or eastern coasts or parts of the said tracts of land by the said indenture mentioned to be given, granted, bargained, sold, enfeoffed, aliened and confirmed or any of them, and also all mines and minerals as well royal mines of gold and silver as other mines and minerals whatsoever in the said lands and premises or any part thereof, and all jurisdictions, rights, royalties, liberties, freedoms, immunities, privileges, franchises, pre-eminences and commodities whatsoever which they the said council established at Plymouth in the County of Devon for the planting, ruling, ordering and governing of New England in America, then had or might use, exercise or enjoy in or within the said lands and premises by the said indenture mentioned to be given, granted, bargained, sold, enfeoffed and confirmed or in or within any part or parcel thereof to have and to hold the said part of New England in America which lies and extends and is abutted as aforesaid, and every part and parcel thereof, and

all the said islands, rivers, ports, havens, waters, fishings, mines, minerals, jurisdictions, franchises, royalties, liberties, privileges, commodities, hereditaments and premises whatsoever with the appurtenances unto the said Sir Henry Rosewell, Sir John Young, Thomas Southcott, John Humfrey, John Endicott and Simon Whetcombe, their heirs and assigns and their associates to the only proper and absolute use and behoof of the said Sir Henry Rosewell, Sir John Young, Thomas Southcott, John Humphrey, John Endicott and Simon Whetcombe, their heirs and assigns and their associates for evermore: To be holden of us our heirs and successors as of our manor of East Greenwich in the County of Kent in free and common socage and not *in capite* nor by Knight's service: yielding and paying therefor unto us, our heirs and successors, the fifth part of the ore of gold and silver which shall from time to time and at all times hereafter happen to be found, gotten, had and obtained in any of the said lands within the said limits or in or within any part thereof for and in satisfaction of all manner, duties, demands and services whatsoever to be done, made or paid to us, our heirs and successors as in and by the said recited indenture more at large may appear. Now know ye that we at the humble suit and petition of the said Sir Henry Rosewell, Sir John Young, Thomas Southcott, John Humphrey, John Endicott and Simon Whetcombe and of others whom they have associated unto them, have for divers good causes and considerations us moving, granted and confirmed and by these presents of our especial grace, certain knowledge and mere motion, do grant and confirm unto the said Sir Henry Rosewell, Sir John Young, Thomas Southcott, John Humphrey, John Endicott and Simon Whetcombe and to their associates hereafter named [*videlicet*] Sir Richard Saltonstall, Knight, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Cradock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuel Browne, Thomas Hutchins, William Vassall, William Pinchion and George

Foxcrofte, their heirs and assigns, all the said part of New England in America lying and extending between the bounds and limits in the said recited indenture expressed, and all lands and grounds, place and places, soils, woods and wood grounds, havens, ports, rivers, waters, mines, minerals, jurisdictions, rights, royalties, liberties, freedoms, immunities, privileges, franchises, pre-eminencies, hereditaments and commodities whatsoever, to them, the said Sir Henry Rosewell, Sir John Young, Thomas Southcott, John Humphrey, John Endicott and Simon Whetcombe, their heirs and assigns, and to their associates by the said recited indenture, given, granted, bargained, sold, enfeoffed, aliened and confirmed, or mentioned or intended thereby to be given, granted, bargained, sold, enfeoffed, aliened and confirmed. To have and to hold the said part of New England in America and other, the premises hereby mentioned, to be granted and confirmed and every part and parcel thereof with the appurtenances, to the said Sir Henry Rosewell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humphrey, John Endicott, Simon Whetcombe, Isaac Johnson, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Browne, Samuel Browne, Thomas Hutchins, Samuel Aldersey, John Ven, Matthew Cradock, George Harwood, Increase Nowell, William Vassall, William Pinchion and George Foxcrofte, their heirs and assigns forever to their only proper and absolute use and behoof forevermore. To be holden of us our heirs and successors, as of our manor of East Greenwich aforesaid in free and common socage and not *in capite* nor by Knight's service, and also yielding and paying therefor to us, our heirs and successors, the fifth part of all ore of gold or silver which from time to time and at all times hereafter shall be there gotten, had or obtained for all services, exactions and demands whatsoever, according to the tenure and reservation in the said recited indenture expressed. And further know ye, that of our more especial grace, certain knowledge and mere motion we have given and granted, and

by these present do for us, our heirs and successors, give and grant unto the said Sir Henry Rosewell (the other names omitted), their heirs and assigns, all that part of New England in America, which lies and extends between a great river there commonly called Monomack river, alias Merrimack river, and a certain other river there called Charles river being in the bottom of a certain bay there commonly called Massachusetts alias Mattachusetts alias Massatusetts Bay; and also all and singular those lands and hereditaments whatsoever lying within the space of three English miles, on the south part of the said river called Charles river or of any or every part thereof; and also all and singular the lands and hereditaments whatsoever lying and being within the space of three English miles to the southward of the southern most part of the said bay called Massachusetts alias Mattachusetts alias Massatusetts Bay; and also all those lands and hereditaments whatsoever which lie and be within the space of three English miles to the Northward of said river, called Monomack alias Merrimack, or to the northward of any or every part thereof and all lands and hereditaments, whatsoever lying within the limits aforesaid, north and south in latitude and breadth and in length and longitude, of and within all the breadth aforesaid throughout the main lands there from the Atlantic and western sea and ocean on the east part to the south sea on the west part; and all lands and grounds, place and places, soil, wood and wood grounds, havens, ports, rivers, waters and hereditaments whatsoever, lying within the said bounds and limits and every part and parcel thereof; and also all islands in America aforesaid, in the said seas or either of them on the western or eastern coasts, or parts of the said tract of lands hereby mentioned, to be given and granted or any of them; and all mines and minerals, as well royal mines of gold and silver as other mines and minerals whatsoever in the said lands or premises or any part thereof, and free liberty of fishing in or within any, the rivers or waters within the bounds and limits aforesaid, and the seas thereunto adjoining; and all fishes, royal fishes, whales, balan, sturgeons

and other fishes of what kind or nature soever, that shall at anytime hereafter be taken in or within the said seas or waters or any of them by the said Sir Henry Rosewell [the other names omitted], their heirs or assigns or by any other person or persons whatsoever these inhabiting, by them or any of them to be appointed to fish therein. Provided always that if the said lands, islands or any other, the premises hereinbefore mentioned, and by these presents intended and meant to be granted, were at the time of the granting of the said former letters patent, dated the third day of November, in the eighteenth year of our said dear father's reign, aforesaid, actually possessed or inhabited by any other Christian prince or state or were within the bounds, limits or territories of that Southern Colony, then before granted by our said late father to be planted by divers of his loving subjects in the south parts of America, that then this present grant shall not extend to any such parts or parcels thereof so formerly inhabited or lying within the bounds of the southern plantation as aforesaid, but as to those parts or parcels so possessed or inhabited by such Christian prince or state or being within the bounds aforesaid, shall be utterly void, these presents or anything therein contained to the contrary notwithstanding. To have and to hold, possess and enjoy the said parts of New England in America, which lie, extend and are abutted as aforesaid and every part or parcel thereof, and all the islands, rivers, ports, havens, waters, fishings, fishes, mines, minerals, jurisdictions, franchises, royalties, liberties, privileges, commodities and premises, whatsoever with the appurtenances unto the said Sir Henry Rosewell [the other names omitted] their heirs and assigns forever, to the only proper and absolute use and behoof of the said Sir Henry Rosewell [same names omitted] their heirs and assigns for evermore: To be holden of us, our heirs and successors as of our manor of East Greenwich in our County of Kent, within our realm of England in free and common soccage and not in *capite* nor by Knight's service, and also yielding and paying therefor to us, our heirs and successors, the fifth part only of all

ore of gold and silver, which from time to time and at all times hereafter, shall be there gotten, had or obtained for all services, exactions and demands whatsoever; provided always and our express will and meaning is that only one fifth part of the gold and silver ore above mentioned in the whole and no more be reserved or payable unto us, our heirs and successors by color or virtue of these presents the double reservation or rentals aforesaid or anything herein contained notwithstanding. And forasmuch as the good and prosperous success of the plantation of the said parts of New England aforesaid, intended by the said Sir Henry Rosewell [the other names omitted] to be speedily set upon, cannot but chiefly depend next under the blessing of Almighty God and the support of our royal authority, upon the good government of the same, to the end that the affairs and businesses which from time to time shall happen and arise concerning the said lands and the plantation of the same may be the better managed and ordered, we have further hereby of our special grace, certain knowledge and mere motion, given, granted and confirmed, and for us our heirs and successors do give, grant and confirm unto our said trusty and well-beloved subjects, Sir Henry Rosewell [same names omitted], and for us our heirs and successors we will and ordain that the said Sir Henry Rosewell [same names omitted] and all such others as shall hereafter be admitted and made free of the company and society hereafter mentioned, shall from time to time and at all times forever hereafter be by virtue of these presents one body corporate and politick in fact and name by the name of the Governor and Company of the Mattachusetts Bay in New England, and them by the name of the Governor and Company of the Mattachusetts Bay in New England, one body politick and corporate in deed, fact and name: We do for us, our heirs and successors, make, ordain, constitute and confirm by these presents and by that name they shall have perpetual succession, and that by the same name they and their successors shall and may be capable and enabled as well to implead and to be impleaded,

and to prosecute, demand and answer and be answered unto, in all and singular suits, causes, quarrels and actions of what kind or nature soever. And also to have, take, possess, acquire and purchase any lands, tenements or hereditaments, or any goods or chattels, and the same to lease, grant, demise, alien, bargain, sell and dispose of as other our liege people of this our realm of England or any other corporation or body politick of the same may lawfully do. And further that the said Governor and company and their successors may have forever one common seal to be used in all causes and occasions of the said company, and the same seal may alter, change, break and new make from time to time at their pleasures. And our will and pleasure is and we do hereby for us, our heirs and successors ordain and grant that from henceforth forever there shall be one Governor, one Deputy Governor and eighteen assistants of the same company, to be from time to time constituted, elected and chosen out of the freemen of the said company for the time being in such manner and form as hereafter in these presents is expressed; which said officers shall apply themselves to take care for the best disposing and ordering of the general business and affairs of, for and concerning the said lands and premises hereby mentioned to be granted, and the plantation thereof and the government of the people there. And for the better execution of our royal pleasure and grant in this behalf we do by these presents for us, our heirs and successors, nominate, ordain, make and constitute our well-beloved the said Matthew Cradock to be the first and present Governor of the said company, and the said Thomas Goffe to be Deputy Governor, and the said Sir Richard Saltonstall, Isaac Johnson, Samuel Aldersey, John Ven, John Humphrey, John Endicott, Simon Whitcombe, Increase Nowell, Richard Perry, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Adams, Thomas Hutchins, John Browne, George Foxcroft, William Vassall and William Pinchion to be the present assistants of the said company for such time and in such manner as in and by these presents is hereafter declared and

appointed. And further we will and by these presents for us, our heirs and successors, do ordain and grant that the Governor of the said company for the time being, or in his absence by occasion of sickness or otherwise, the Deputy Governor for the time being, shall have authority from time to time and upon all occasions to give orders for the assembling of the said company and calling them together to consult and advise of the businesses and affairs of the said company. And that the said Governor for the time being shall or may, once every month or oftener, at their pleasure, assemble and hold, and keep a Court or Assembly of themselves for the better ordering and directing of their affairs. And that any seven or more persons of the Assistants, together with the Governor or Deputy Governor, so assembled, shall be said, taken, held and reputed to be and shall be a full and sufficient Court or Assembly of the said Company, for the handling, ordering and dispatching of all such businesses and occurrences as shall from time to time happen, touching or concerning the said company or plantation, and that there shall or may be held and kept by the Governor or Deputy Governor of the said company and seven or more of the said Assistants for the time being upon every last Wednesday in Hillary, Easter, Trinity and Michas terms respectively for ever one great, general and solemn Assembly, which four General Assemblies shall be styled and called the Four Great and General Courts of the said Company: In all and every or any of which said Great and Generall Courts so assembled, we do for us, our heirs and successors, give and graunt to the said Governor and Company and their successors, That the Governor or in his absence the Deputy Governor of the said Company for the time being and such of the Assistants and freemen of the said Company as shall be present, or the greater number of them so assembled, whereof the Governor or Deputy Governor and six of the Assistants at the least to be seven shall have full power and authority to choose, nominate and appoint such and so many others as they shall think fit, and that shall be willing to ac-

cept the same to be free of the said Company and Body and then unto the same, to admit and to elect and constitute such officers as they shall think fit and requisite for the ordering, managing and dispatching of the affairs of the said Governor and Company and their successors. And to make laws and ordinances for the good and welfare of the said Company, and for the government and ordering of the said lands and plantation and the people inhabiting, and to inhabit the same as to them from time to time shall be thought meet, so as such laws and ordinances be not contrary or repugnant to the laws and statutes of this our realm of England: And our will and pleasure is, And we do hereby for us, our heirs and successors, establish and ordain that yearly, once in the year forever, hereafter, namely, the last Wednesday in Easter term, yearly, the Governor, Deputy Governor and Assistants of the said Company, and all other officers of the said Company, shall be in the General Court or Assembly, to be held for that day or time, newly chosen for the year ensuing by such greater part of the said Company, for the time being then and there present, as is aforesaid; And if it shall happen the present Governor, Deputy Governor and Assistants, by these present appointed or such as shall hereafter be newly chosen into their rooms or any of them or any other of the officers to be appointed for the said Company die or be removed from his or their several offices or places before the said general day of election (whom we do hereby declare for any misdemeanor or defect to be removeable by the Governor or Deputy Governor, Assistants and Company or such greater part of them in any of the publique Courts to be assembled as aforesaid), That then and in every such case, it shall and may be lawfull to and for the Governor, Deputy Governor, Assistants and Company, aforesaid, or such greater part of them so to be assembled as is aforesaid in any of their assemblies to proceed to a new election of one or more other of their company in the room or place, rooms or places of such officers so dying or removed according to their discretions. And immediately upon and after such

election and elections made of such Governor, Deputy Governor, Assistant or Assistants or any other officers of the said Company in manner and form aforesaid, the authority, office and power aforesaid, given to the former Governor, Deputy Governor or other officer or officers so removed in whose stead and place new shall be so chosen, shall as to him and them and every of them cease and determine; Provided, also, and our will and pleasure is, That as well such as are by these presents appointed to be the present Governor, Deputy Governor and Assistants of the said Company, as them that shall succeed them and all other officers to be appointed and chosen as aforesaid, shall before they undertake the execution of their said offices and places respectively, take their corporal oaths for the due and faithful performance of their duties in their several offices and places before such person or persons as are by these present hereunder, appointed to take and receive the same: That is to say the said Matthew Cradock who is hereby nominated and appointed the present Governor of the said Company, shall take the said oaths before one or more of the Masters of our Courts of Chauncery, for the time being, unto which master or masters of Chancery we do by these presents, give full power and authority to take and administer the said oath to the said Governor accordingly; and after the said Governor shall be so sworn then the said Deputy Governor and assistants before by these present, nominated and appointed shall take the several oaths to their offices and places respectively, belonging before the said Matthew Cradock, the present Governor so formerly sworn as aforesaid. And every such person as shall be at the time of the annual election or otherwise, upon death or removal to be the new Governor of the said Company, shall take the oaths to that place belonging before the Deputy Governor or two of the Assistants of the said Company at the least for the time being. And the new elected Deputy Governor and Assistants and all other officers to be hereafter chosen as aforesaid, from time to time to take the oath to their places respectively, belonging before the Gov-

ernor of the said Company for the time being, unto which said Governor, Deputy Governor and Assistants, we do by these present give full power and authority to give and administer the said oaths respectively, according to our true meaning herein before declared, without any commission or further warrant to be had and obtained of us, our heirs or successors in that behalf. And we do further of our especial grace, certain knowledge and mere motion for us, our heirs and successors, give and grant to the said Governor and Company, and their successors forever, by these presents that it shall be lawful and free for them and their assigns, at all and every time and times hereafter, out of any of our realms or dominions whatsoever, to take, lead, carry and transport for and into their voyages, and for and towards the said plantation in New England, all such and so many of our loving subjects or any other strangers that will become our loving subjects and live under our allegiance as shall willingly accompany them in the same voyage and plantation, and also shipping armour, weapons, ordnance, munition, powder, shot, corn, victuals and all manner of clothing, implements, furniture, beasts, cattle, horses, mares, merchandise and all other things necessary for the said plantation and for their use and defence and for trade with the people there, and in passing and returning to and fro, any law or statute to the contrary hereof in any wise notwithstanding; and without paying or yielding any custom or subsidy either inward or outward to us, our heirs or successors, for the same for the space of seven years from the day of the date of these presents. Provided that none of the said persons be such as shall be hereafter, by especial name restrained by us, our heirs or successors. And for their further encouragement, of our especial grace and favor, we do by these presents for us, our heirs and successors, yield and grant to the said Governor and Company and their successors and every of them, their factors and assigns that they and every of them, shall be free and quit from all taxes, subsidies and customs in New England for the like space of seven years, and from all

taxes and impositions for the space of twenty and one years, upon all goods and merchandises at any time or times hereafter, either upon importation thither or exportation from thence into our realm of England, or unto any other our dominions by the said Governor and Company and their successors, their deputies, factors and assigns or any of them; except only the five pounds per centum due for customs upon all such goods and merchandises as after the said seven years shall be expired shall be brought or imported into our realm of England or any of our dominions according to the ancient trade of merchants, which five pounds per centum only being paid, it shall be thenceforth lawful and free for the said adventurers the same goods and merchandises to export and carry out of our said dominion into foreign parts, without any custom, tax or other duty, to be paid to us, our heirs or successors, or to any other officers or ministers of us, our heirs or successors. Provided that the said goods and merchandises be shipped out within thirteen months after their first landing within any part of the said dominions. And we do, for us, our heirs and successors, give and grant unto the said Governor and Company and their successors that whensoever or so often as any custom or subsidy shall grow due or payable unto us, our heirs or successors according to the limitation and appointment aforesaid, by reason of any goods, wares or merchandises to be shipped out or any return to be made of any goods, wares or merchandise unto or from the said parts of New England hereby mentioned, to be granted as aforesaid, that then and so often and in such case the farmers, customers and officers of our customs of England and Ireland, and every of them, for the time being, upon request made to them by the said Governor and Company, or their successors, factors or assigns, and upon convenient security to be given in that behalf, shall give and allow unto the said Governor and Company and their successors, and to all and every person and persons free of that company as aforesaid, six months' time for the payment of the one half of all such custom and subsidy as shall

be due and payable unto us, our heirs and successors, for the same; for which these, our letters patent, or the duplicate, or the enrolment thereof, shall be unto our said officers a sufficient warrant and discharge. Nevertheless, our will and pleasure is that if any of the said goods, wares and merchandise which be or shall be at any time hereafter landed or exported out of any of our realms aforesaid, and shall be shipped with a purpose not to be carried to the parts of New England aforesaid, but to some other place, that then such payment, duty, custom, imposition or forfeiture shall be paid or belong to us, our heirs and successors for the said goods, wares and merchandise so fraudulently sought to be transported, as if this our grant had not been made or granted. And we do further will and by these presents for us, our heirs and successors firmly enjoin and command as well the treasurer, chancellor and barons of the exchequer of us, our heirs and successors as also all and singular the customers, farmers and collectors of the customs, subsidies and import and other the officers and ministers of us, our heirs and successors whatsoever for the time being that they and every of them upon the showing forth unto them of these letters patent or the duplicate or exemplification of the same, without any other writ or warrant whatsoever, from us, our heirs or successors, to be obtained or sued forth, do and shall make full, whole, entire and due allowance and clean discharge unto the said Governor and Company and their successors of all customs, subsidies, impositions, taxes and duties whatsoever that shall or may be claimed by us, our heirs and successors, of or from the said Governor and Company and their successors, for by reason of the said goods, chattels, wares, merchandises and premises to be exported out of our said dominions or any of them, into any part of the said lands or premises hereby mentioned, to be given, granted and confirmed, or for or by reason of any of the said goods, chattels, wares or merchandises to be imported from the said lands and premises hereby mentioned to be given, granted and confirmed into any of our said dominions

or any part thereof as aforesaid, excepting only the said five pounds per centum hereby reserved and payable after the expiration of the said term of seven years as aforesaid and not before : And these our letters patent on the enrollment, duplicate or exemplification of the same shall be forever hereafter from time to time, as well to the treasurer, chancellor and barons of the exchequer of us our heirs and successors as to all and singular the customers, farmers and collectors of the customs, subsidies and imports of us, our heirs and successors and all searchers and other the officers and ministers whatsoever of us, our heirs and successors for the time being a sufficient warrant and discharge in this behalf. And further our will and pleasure is and we do hereby for us, our heirs and successors, ordain and declare and grant to the said Governor and Company and their successors, that all and every, the subjects of us, our heirs and successors, which shall go to and inhabit within the said lands and premises hereby mentioned to be granted, and every of their children which shall happen to be born there or on the seas in going thither or returning from thence, shall have and enjoy all liberties and immunities of free and natural subjects within any of the dominions of us, our heirs and successors, to all intents, constructions and purposes whatsoever, as if they and every of them were born within the realm of England. And that the Governor and Deputy Governor of the said company for the time being, or either of them, and any two or more of such of the said Assistants as shall be thereunto appointed by the said Governor and Company at any of their Courts or Assemblies to be held as aforesaid, shall and may at all times and from time to time hereafter, have full power and authority to minister and give the oath and oaths of supremacy and allegiance, or either of them, to all and every person and persons which shall at any time or times hereafter go or pass to the lands and premises hereby mentioned to be granted to inhabit in the same. And we do of our further grace, certain knowledge and mere motion, give and grant to the said Governor and Company and their success-

ors, That it shall and may be lawfull to and for the Governor and Deputy Governor and such of the Assistants and freemen of the said company for the time being as shall be assembled in any of their General Courts aforesaid, or in any other Courts to be specially summoned and assembled for that purpose, or the greater part of them (whereof the Governor or Deputy Governor and six of the Assistants, to be always seven), from time to time, to make, ordain and establish all manner of wholesome and reasonable orders, laws, statutes and ordinances, directions and instructions, not contrary to the laws of this, our realm of England, as well for settling of the forms and ceremonies of government and magistracy fit and necessary for the said plantation and the inhabitants there, and for naming and styling of all sorts of officers, both superior and inferior, which they shall find needfull for that government and plantation, and the distinguishing and setting forth of the several duties, powers and limits of every such office and place and the forms of such oaths warrantable by the laws and statutes of this, our realm of England, as shall be respectively ministered unto them for the execution of the said several offices and places, as also for the disposing and ordering of the elections of such of the said officers as shall be annual, and of such others as shall be to succeed in case of death or removal and ministering the said oaths to the new elected officers, and for impositions of lawfull fines, mulcts, imprisonment or other lawfull correction, according to the course of other corporations in this, our realm of England, and for the directing, ruling and disposing of all other matters and things whereby our said people, inhabitants there, may be so religiously, peaceably and civilly governed as their good life and orderly conversation may win and incite the natives of the country to the knowledge and obedience of the only true God and Saviour of mankind, and the Christian faith which in our royal intention and the adventurers' free profession is the peacefull end of this plantation. Willing, commanding and requiring and by these presents for us, our heirs and successors, ordaining

and appointing that all such orders, laws, statutes and ordinances, instructions and directions as shall be so made by the Governor or Deputy Governor of the said Company and such of the Assistants and freemen as aforesaid and published in writing under their common seal, shall be carefully and duly observed, kept, performed and put in execution according to the true intent and meaning of the same: and these our letters patent or the duplicate on exemplification thereof shall be to all and every such officers, superior and inferior, from time to time for the putting of the same orders, laws, statutes and ordinances, instructions and directions in due execution against us, our heirs and successors, a sufficient warrant and discharge. And we do further for us our heirs and successors give and grant to the said Governor and company and their successors by these presents, That all and every such chief commanders, captains, governors and other officers and ministers as by the said orders, laws, statutes, ordinances, instructions or directions of the said Governor and Company for the time being shall be from time to time hereafter employed, either in the government of the said inhabitants and plantation or in the way by sea thither or from thence, according to the natures and limits of their offices and places respectively, shall from time to time hereafter forever within the precincts and parts of New England hereby mentioned to be granted and confirmed or in the way by sea thither or from thence, have full and absolute power and authority to correct, punish, pardon, govern and rule all such, the subjects of us our heirs and successors, as shall from time to time adventure themselves in any voyage thither or from thence, or that shall at any time hereafter inhabit within the precincts and parts of New England aforesaid, according to the orders, laws, ordinances, instructions and directions aforesaid not being repugnant to the laws and statutes of our realm of England as aforesaid: And we do further for us, our heirs and successors give and grant, to the said Governor and Company and their successors by these presents, That it shall and may be lawfull to

and for the chief commanders, governors and officers of said Company for the time being, who shall be resident in that part of New England in America by these presents granted, and others there inhabiting, by their appointment and direction from time to time and at all times hereafter for their special defence and safety to encounter, expulse, repell and resist by force of arms, as well by sea as by land and by all fitting ways and means whatsoever, all such person and persons as shall at any time hereafter attempt or enterprise the destruction, invasion, detriment or annoyance to the said plantation or inhabitants, and to take and surprise by all ways and means whatsoever all and every such person and persons with their ships, armor, munition and other goods as shall in hostile manner invade or attempt the defeating of the said plantation or the hurt of the said company and inhabitants: Nevertheless our will and pleasure is and we do hereby declare to all Christian kings, princes and states that if any person or persons which shall hereafter be of the said company or plantation or any other by license or appointment of the said Governor and company for the time being shall at any time or times hereafter rob or spoil by sea or by land or do any hurt, violence or unlawful hostility to any of the subjects of us, our heirs or successors, or any of the subjects of any prince or state being then in league and amity with us, our heirs and successors, and that upon such injury done and upon just complaint of such prince or state on their subjects we, our heirs and successors, shall make open proclamation within any of the parts within our realm of England commodious for that purpose that the person or persons having committed any such robbery or spoil shall within the term limited by such a proclamation make full restitution or satisfaction of all such injuries done so as the said prince or others so complaining may hold themselves fully satisfied and contented; and that if the said person or persons having committed such robbery or spoil shall not make or cause to be made satisfaction accordingly within such time so to be limited, that then it shall be lawful for us, our heirs and successors to put the said per-

son or persons out of our allegiance and protection and that it shall be lawful and free for all princes to prosecute with hostility the said offenders and every of them, their and every of their procurers, aiders, abettors and comforters in that behalf : Provided also and our express will and pleasure is and we do by these presents for us, our heirs and successors, ordain and appoint that these presents shall not in any manner enure or be taken to abridge, bar or hinder any of our loving subjects whatsoever to use and exercise the trade of fishing upon that coast of New England in America by these presents mentioned to be granted ; but that they and every or any of them shall have full and free power and liberty to continue and use their said trade of fishing upon the said coast in any the seas thereunto adjoining or any arms of the seas or salt water rivers where they have been wont to fish and to build and set up upon the lands by these presents granted such wharves, stages and work houses as shall be necessary for the salting, drying, keeping and packing up of their fish to be taken or gotten upon that coast ; and to cut down and take such trees and other materials there growing or being as shall be needful for that purpose and for all other necessary easements, helps and advantage concerning their said trade of fishing there in such manner and form as they have been heretofore at any time accustomed to do without making any wilful waste or spoil, anything in these presents contained to the contrary notwithstanding. And we do further for us, our heirs and successors, ordain and grant to the said Governor and Company and their successors by these presents that these our letters patent shall be firm, good, effectual and available in all things and to all intents and constructions of law according to our true meaning herein before declared and shall be construed, reputed and adjudged in all cases most favorably on the behalf and for the benefit and behoof of the said Governor and Company and their successors ; although express mention of the true yearly value or certainty of the premises or any of them or of any other gifts or grants by us or any of our progenitors

or predecessors to the aforesaid Governor or Company before this time made in their presents is not made ; or any statute, act, ordinance, provision, proclamation or restraint to the contrary thereof heretofore had, made, published, ordained or provided or any other matter, cause or thing whatsoever to the contrary thereof in anywise notwithstanding.

In witness whereof we have caused these our letters to be made patent.

Witness ourself at Westminster the fourth day of March in the fourth year of our reign.

Per Breve de Privato Sigillo

Wolseley.

Praedictus Matthaeus Cradocke Juratus est de Fide et Obedientia Regi et Successoribus suis et de Debita Executione Officii Gubernatoris juxta Tenorem Praesentium 18 Martii 1628. Coram me Carolo Caesare Milite in Cancellaria Mro.

Char. Caesar.

APPENDIX

E.

CHARTER OF THE PROVINCE OF THE MASSACHUSETTS BAY.

William and Mary by the grace of God, King and Queen of England, Scotland, France and Ireland, defenders of the faith &c., To all to whom these presents shall come, greeting : Whereas his late majesty King James the First our royal predecessor by his letters patents under the great seal of England, bearing date at Westminster the third day of November, in the eighteenth year of his reign, did give and grant unto the council, established at Plymouth in the County of Devon, for the planting, ruling, ordering and governing of New England in America, and to their successors and assigns, all that part of America, lying and being in breadth from forty degrees of northerly latitude from the equinoctial line to the forty-eighth degree of the said northerly latitude inclusively and in length of and within all the breadth aforesaid, throughout all the main lands from sea to sea together, also with all the firm lands, soils, grounds, havens, ports, rivers, waters, fishings, mines and minerals, as well royal mines of gold and silver as other mines and minerals, precious stones, quarries and all and singular, other commodities, jurisdictions, royalties, privileges, franchises and pre-eminences, both within the said tract of land upon the main and also within the islands and seas adjoining. Provided always that the said lands, islands or any the premises by the said letters patent intended or meant to be granted were not then actually possessed or inhabited by any other Christian prince or state or within the bounds, limits or territories of the southern colony then before granted by the said late King James, the first to be planted by divers of his subjects in the south

parts ; To have and to hold, possess and enjoy, all and singular the aforesaid continent, lands, territories, islands, hereditaments and precincts, seas, waters, fishings, with all and all manner of their commodities, royalties, liberties, pre-eminences and profits that should from thenceforth arise from thence, with all and singular their appurtenances and every part and parcel thereof, unto the said council and their successors and assigns forever, to their sole and proper use and benefit of the said council and their successors and assigns forever : To be holden of his said late majesty King James the First, his heirs and successors as of his manor of East Greenwich, in the County of Kent, in free and common socage and not *in capite* or by Knight's service, yielding and paying therefor to the said late King, his heirs and successors, the fifth part of the ore of gold and silver, which should from time to time and at all times there after happen to be found, gotten, had and obtained in, at or within any part or parcel thereof, for or in respect of all and all manner of duties, demands and services whatsoever, to be done, made or paid to the said late King James, the first, his heirs and successors (as in and by the said letters patent amongst sundry other claims, powers, privileges and grants therein contained more at large appeareth) : And whereas the said Council established at Plymouth in the County of Devon, for the planting, ruling, ordering and governing of New England in America, did by their deed indented under their common seal, bearing date the nineteenth of March, in the third year of the reign of our royal grandfather King Charles, the first of ever blessed memory, give, grant, bargain, sell, enfeoff, alien and confirm to Sir Henry Rosewell, Sir John Young, Knights, Thomas Southcott, John Humphreys, John Endicott and Simon Whetcombe, their heirs and assigns and their associates forever, all that part of New England in America aforesaid, which lies and extends between a great river there commonly called Monomack alias Merimack, and a certain other river there called Charles river being in a bottom of a certain bay there commonly called Massachusetts alias Mattachu-

setts alias Massachusetts bay, and also all and singular those lands and hereditaments whatsoever lying within the space of three English miles on the South part of the said Charles river, or of any or every part thereof; and also all and singular, the lands and hereditaments whatsoever lying and being within the space of three English miles to the Southward of the Southernmost part of the said bay called Massachusetts alias Mattachusetts alias Massachusetts bay; and also all those lands and hereditaments whatsoever which lie and be within the space of three English miles to the Northward of the said river called Monomack alias Merimack or to the Northward of any and every part thereof, and all lands and hereditaments whatsoever, lying within the limits aforesaid North and South in latitude and in breadth and in length and longitude of and within all the breadth aforesaid, throughout the main lands there from the Atlantic and western sea and ocean on the East part to the South sea on the west part and all lands and grounds, place and places, soil, woods and wood grounds, havens, ports, rivers, waters, fishings and hereditaments whatsoever, lying within the said bounds and limits and every part and parcel thereof; and also all islands lying in America aforesaid in the said seas or either of them on the western or eastern coasts or parts of the said tracts of land by the said indenture mentioned to be given and granted, bargained, sold, enfeoffed, aliened and confirmed or any of them; and also all mines and minerals, as well royal mines of gold and silver as other mines and minerals whatsoever in the said lands and premises or any part thereof, and all jurisdictions, rights, royalties, liberties, freedoms, immunities, privileges, franchises, pre-eminences and commodities whatsoever, which they the said council established at Plymouth in the County of Devon for the planting, ruling, ordering and governing of New England in America, then had or might use, exercise or enjoy in or within the said lands and premises by the same indenture mentioned, to be given, granted, bargained, sold, enfeoffed and confirmed in or within any part or parcel thereof: To have and to hold

the said part of New England in America which lies and extends and is abutted as aforesaid and every part and parcel thereof; and all the said islands, rivers, ports, havens, waters, fishings, mines, minerals, jurisdictions, franchises, royalties, liberties, privileges, commodities, hereditaments and premises whatsoever with the appurtenances unto the said Sir Henry Rosewell, Sir John Young, Thomas Southcott, John Humphreys, John Endicott and Simon Whetcombe their heirs and assigns, and their associates forever, to the only proper and absolute use and behoof of the said Sir Henry Rosewell, Sir John Young, Thomas Southcott, John Humphreys, John Endicott and Simon Whetcombe, their heirs and assigns and their associates forevermore: To be holden of our said royal grandfather, King Charles the first, his heirs and successors as of his manor of East Greenwich in the County of Kent in free and common socage and not *in capite* nor by Knight's service, yielding and paying therefor unto our said royal grandfather his heirs and successors the fifth part of the ore of gold and silver which should from time to time and at all times hereafter happen to be found, gotten, had and obtained in any of the said lands within the said limits or in or within any part thereof for and in satisfaction of all manner of duties, demands and services whatsoever to be done, made or paid to our said royal grandfather, his heirs or successors (as in and by the said recited indenture may more at large appear). And whereas our said royal grandfather in and by his letters patent under the great seal of England bearing date at Westminster, the fourth day of March in the fourth year of his reign for the consideration therein mentioned, did grant and confirm unto the said Sir Henry Rosewell, Sir John Young, Thomas Southcott, John Humphreys, John Endicott and Simon Whitcombe and to their associates after named viz., Sir Richard Saltonstall, Knight, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton,

Thomas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pincheon and George Foxcroft, their heirs and assigns, all the said part of New England in America, lying and extending between the bounds and limits in the said indenture expressed, and all lands and grounds, place and places, soils, woods and wood grounds, havens, ports, rivers, waters, mines, minerals, jurisdictions, rights, royalties, liberties, freedoms, immunities, privileges, franchises, pre-eminences and hereditaments whatsoever; bargained, sold, enfeoffed and confirmed or mentioned or intended to be given, granted, bargained, sold, enfeoffed, aliened and confirmed to them the said Sir Henry Rosewell, Sir John Young, Thomas Southcott, John Humphreys, John Endicott and Simon Whetcombe, their heirs and assigns, and to their associates forever, by the said recited indenture: To have and to hold the said part of New England in America and other the premises thereby mentioned to be granted and confirmed and every part and parcel thereof, with the appurtenances to the said Sir Henry Rosewell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humphreys, John Endicott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pincheon and George Foxcroft, their heirs and assigns forever, to their only proper and absolute use and behoof forevermore: To be holden of our said royal grandfather, his heirs and successors as of his manor of East Greenwich aforesaid, in free and common socage and not *in capite* nor by Knight's service; and also yielding and paying therefor to our said royal grandfather, his heirs and successors, the fifth part only of all the ore of gold and silver which from time to time and at all times after, should be gotten, had or obtained for all services, exactions and demands whatsoever, according to the tenor and reservation in the said recited indenture ex-

pressed. And further our said royal grandfather by the said letters patent did give and grant unto the said Sir Henry Rosewell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humphreys, John Endicott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pincheon and George Foxcroft, their heirs and assigns, all that part of New England in America, which lies and extends between a great river commonly called Monomack alias Merimack river, and a certain other river there called Charles river, being in the bottom of a certain bay there commonly called Massachusetts, alias Mattachusetts, alias Massatusetts bay; and also all and singular those lands and hereditaments whatsoever lying within the space of three English miles on the South part of the said river called Charles river or of any or every part thereof; and also all and singular the lands and hereditaments whatsoever lying and being within the space of three English miles to the Northward of the said river called Monomack alias Merimack or to the Northward of any and every part thereof, and all lands and hereditaments whatsoever lying within the limits aforesaid North and South in latitude and breadth and in length and longitude of and within all the breadth aforesaid throughout the main lands there, from the Atlantic or western sea and ocean on the East part to the South sea on the West part: and all lands and grounds, place and places, soils, woods and wood lands, havens, ports, rivers, waters and hereditaments whatsoever lying within the said bounds and limits and every part and parcel thereof; and also all islands in America aforesaid in the said seas or either of them on the western or eastern coasts or parts of the said tracts of lands thereby mentioned, to be given and granted or any of them; and all mines and minerals as well royal mines of gold and silver as other mines and minerals whatsoever in the said lands and

premises or any part thereof ; and free liberty of fishing in or within any of the rivers and waters within the bounds and limits aforesaid and the seas thereunto adjoining ; and of all fishes, royal fishes, whales, balan, sturgeon and other fishes of what kind or nature soever, that should at any time thereafter be taken in or within the said seas or waters or any of them by the said Sir Henry Rosewell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humphreys, John Endicott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pincheon and George Foxcroft, their heirs or assigns, or by any other person or persons whatsoever there inhabiting by them or any of them to be appointed to fish therein : Provided always that if the said lands, islands or any the premises before mentioned and by the said letters patent last mentioned, intended and meant to be granted were at the time of granting of the said former letters patent dated the third day of November in the eighteenth year of the reign of his late Majesty. King James the first, actually possessed or inhabited by any other Christian prince or state or were within the bounds, limits or territories of the said Southern Colony then before granted by the said King to be planted by divers of his loving subjects in the South parts of America, that then the said grant of our said royal grandfather should not extend to any such parts or parcels thereof so formerly inhabited or lying within the bounds of the Southern plantation as aforesaid. But as to those parts or parcels so possessed or inhabited by any such Christian prince or state, or being within the boundaries aforesaid, should be utterly void : To have and to hold, possess and enjoy the said parts of New England in America which lie, extend and are abutted as aforesaid and every part and parcel thereof ; and all the islands, rivers, ports, havens, waters, fishing, fishes, mines, minerals, jurisdictions,

franchises, royalties, liberties, privileges, commodities and premises whatsoever, with the appurtenances unto the said Sir Henry Rosewell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humphreys, John Endicott, Simon Whetcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall. Theophilus Eaton, Thomas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pincheon and George Foxcroft, their heirs and assigns forever : To the only proper and absolute use and behoof of the said Sir Henry Rosewell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humphrey, John Endicott, Simon Whitcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pincheon and George Foxcroft, their heirs and assigns forevermore : To be holden of our said royal grandfather, his heirs and successors, as of his manor of East Greenwich in the County of Kent within the realm of England, in free and common socage and not *in capite* nor by Knight's service : And also yielding and paying therefor to our said royal grandfather, his heirs and successors, the fifth part only of all the ore of gold and silver which from time to time and at all times hereafter, should be gotten, had or obtained for all services, exactions and demands whatsoever. Provided always and his majesty's express will and meaning was that only one fifth part of all the gold and silver ore above mentioned in the whole and no more should be answered, reserved or payable unto our said royal grandfather, his heirs and successors, by color or virtue of the said last mentioned letters patent, the double reservations or recitals aforesaid or anything therein contained notwithstanding. And to the end that the affairs and business which from time to time should happen and arise con-

cerning the said lands and the plantations of the same might be the better managed and ordered, and for the good government thereof our said royal grandfather, King Charles the first, did by his said letters patent create and make the said Sir Henry Rosewell, Sir John Young, Sir Richard Saltonstall, Thomas Southcott, John Humphreys, John Endicott, Simon Whitcombe, Isaac Johnson, Samuel Aldersey, John Ven, Matthew Craddock, George Harwood, Increase Nowell, Richard Perry, Richard Bellingham, Nathaniel Wright, Samuel Vassall, Theophilus Eaton, Thomas Goffe, Thomas Adams, John Brown, Samuel Brown, Thomas Hutchins, William Vassall, William Pincheon and George Foxcroft, and all such others as should thereafter be admitted and made free of the company and society therein after mentioned, one body corporate and politic in fact and name by the name of the Governor and Company of the Massachusetts Bay in New England, and did grant unto them and their successors divers powers, liberties and privileges, as in and by the said letters patent may more fully and at large appear. And whereas the said Governor and company of the Massachusetts Bay in New England, by virtue of the said letters patent, did settle a colony of the English in the said parts of America, and divers good subjects of this Kingdom encouraged and invited by the said letters patent did transport themselves and their effects into the same, whereby the said plantation did become very populous and divers counties, towns and places were created, erected, made, set forth or designed within the said parts of America by the said Governor and company for the time being: And whereas in the term of the Holy Trinity in the thirty-sixth year of the reign of our dearest uncle, King Charles the Second, a judgment was given in our Court of Chancery then sitting at Winchester upon a writ of *scire facias* brought and prosecuted in the said Court against the Governor and Company of the Massachusetts Bay in New England, that the said letters patent of our said royal grandfather King Charles the first, bearing date at Westminster the fourth day of March, in the fourth year of his

reign, made and granted to the said Governor and Company of the Massachusetts Bay in New England and the enrolment of the same should be cancelled, vacated and annihilated and should be brought into the said Court to be cancelled (as in and by the said judgment remaining upon record in the said Court doth more at large appear): And whereas several persons employed as agents in behalf of our said colony of the Massachusetts Bay in New England have made their humble application unto us, that we would be graciously pleased by our royal charter to incorporate our subjects in our said colony and to grant and confirm unto them such powers, privileges and franchises as in our royal wisdom should be thought most conducing to our interest and service and to the welfare and happy state of our subjects in New England: And we being graciously pleased to gratify our said subjects and also to the end, our good subjects within our Colony of New Plymouth in New England aforesaid, may be brought under such a form of government as may put them in a better condition of defence, and considering as well the granting unto them as unto our subjects in the said Colony of the Massachusetts Bay, our royal charter with reasonable powers and privileges, will much tend not only to the safety but to the flourishing estate of our subjects in the said parts of New England and also to the advancing of the ends for which the said plantations were at first encouraged; of our special grace, certain knowledge and mere motion have willed and ordained and we do by these present, for us, our heirs and successors will and ordain that the territories and colonies commonly called or known by the names of the Colony of the Massachusetts Bay and Colony of New Plymouth the province of Main, the territory called Accada or Nova Scotia; and all that tract of land lying between the said territories of Nova Scotia, and the said province of Main, be erected, united and incorporated: And we do by these presents unite, erect and incorporate the same into one real province by the name of our province of the Massachusetts Bay in New England; and of our especial grace,

certain knowledge and mere motion we have given and granted and by these presents for us, our heirs and successors do give and grant unto our good subjects the inhabitants of our said province or territory of the Massachusetts Bay and their successors all that part of New England in America lying and extending from the great river commonly called Monomack alias Merimack on the North part and from three miles Northward of the said river to the Atlantic or western sea or ocean on the South part, and all the lands and hereditaments whatsoever lying within the limits aforesaid and extending as far as the outermost points or promontories of land called Cape Cod and Cape Malabar North and South, and in latitude, breadth and in length and longitude of and within all the breadth and compass aforesaid throughout the main land there from the said Atlantic or Western sea and ocean on the East part, towards the South Sea or Westward as far as our Colonies of Rhode Island, Connecticut and the Narragansett Country: And also all that part and portion of mainland beginning at the entrance of Piscataway harbor, and so to pass up the same into the river of Newichwannock and through the same into the furthest head thereof, and from thence Northwestward till one hundred and twenty miles be finished, and from Piscataway harbor mouth aforesaid Northeastward along the sea coast to Sagadehock, and from the period of one hundred and twenty miles aforesaid to cross over land to the one hundred and twenty miles before reckoned, up into the land from Piscataway harbor through Newichwannock river and also the North half of the Isles of Shoals, together with the Isles of Capawock and Nantucket near Cape Cod aforesaid, and also the lands and hereditaments lying and being in the country or territory commonly called Accada or Nova Scotia, and all those lands and hereditaments lying and extending between the said country or territory of Nova Scotia and the said river of Sagadehock or any part thereof: and all lands, grounds, places, soils, woods and wood grounds, havens, ports, rivers, waters and other hereditaments and premises

whatsoever lying within the said bounds and limits aforesaid and every part and parcel thereof: and also all islands and islets lying within ten leagues directly opposite to the main land within the said bounds: and all mines and minerals, as well royal mines of gold and silver as other mines and minerals whatsoever in the said lands and premises or any part thereof. To have and to hold the said territories, tracts, countries, lands, hereditaments and all and singular other the premises with them and every of their appurtenances to our said subjects, the inhabitants of our said province of the Massachusetts Bay in New England and their successors to their only proper use and behoof for evermore to be holden of us, our heirs and successors as of our manor of East Greenwich, in the County of Kent, by fealty only in free and common socage, yielding and paying therefor yearly to us, our heirs and successors, the fifth part of all gold and silver ore and precious stones which shall from time to time, and at all times hereafter, happen to be found, gotten, had and obtained in any of the said lands and premises or within any part thereof: Provided, nevertheless, and we do for us, our heirs and successors grant and ordain that all and every such lands, tenements and hereditaments, and all other estates which any person or persons, or bodies politic or corporate, towns, villages, colleges or schools do hold and enjoy, or ought to hold and enjoy, within the bounds aforesaid, by or under any grant or estate duly made or granted by any general court formerly held, or by virtue of the letters patent hereinbefore recited, or by any other lawful right or title whatsoever, shall be by such person or persons, bodies politic and corporate, towns, villages, colleges or schools, their respective heirs, successors and assigns forever hereafter held and enjoyed according to the purport and intent of such respective grant, under and subject nevertheless to the rents and services thereby reserved or made payable, any matter or thing whatsoever to the contrary notwithstanding. And provided also, That nothing herein contained shall extend, or be understood or taken to

impeach or prejudice, any right, title, interest or demand which Samuel Allen of London, merchant, claiming from and under John Mason, Esq., deceased, or any other person or persons, hath or have or claimeth to have, hold or enjoy of, into or out of any part or parts of the premises situate within the limits above mentioned; but that the said Samuel Allen, and all and every such person and persons, may and shall have, hold and enjoy the same in such manner (and no other than) as if these presents had not been had or made. It being our further will and pleasure That no grants or conveyances of any lands, tenements or hereditaments, to any towns, colleges, schools of learning, or to any private person or persons, shall be judged or taken to be avoided or prejudiced for or by reason of any want or defect of form, but that the same stand and remain in force and be maintained, adjudged and have effect in the same manner as the same should or ought before the time of the said recited judgment according to the laws and rules then and there usually practiced and allowed. And we do further, for us, our heirs and successors, will, establish and ordain, That from henceforth forever there shall be one governor, one lieutenant or deputy governor, and one secretary of our said province or territory, to be from time to time appointed and commissioned by us, our heirs and successors, and eight and twenty assistants or counsellors to be advising and assisting to the Governor of our said province or territory for the time being, as by these presents is hereafter directed and appointed; which said counsellors or assistants are to be constituted, elected and chosen in such form and manner as hereafter in these presents is expressed. And for the better execution of our royal pleasure and grant in this behalf, we do by these presents, for us, our heirs and successors, nominate, ordain, make and constitute our trusty and well beloved Simon Bradstreet, John Richards, Nathaniel Saltonstall, Wait Winthrop, John Phillips, James Russell, Samuel Sewall, Samuel Appleton, Bartholomew Gedney, John Hathorn, Elisha Hutchinson,

Robert Pike, Jonathan Corwin, John Jolliffe, Adam Winthrop, Richard Middlecot, John Foster, Peter Sergeant, John Lynde, Samuel Heyman, Stephen Mason, Thomas Hinkley, William Bradford, John Walley, Barnabas Lothrop, Job Alcot, Samuel Daniel and Sylvanus Davis, Esqs., the first and present counsellors, or assistants of our said province; to continue in the said respective offices or trusts of counsellors or assistants until the last Wednesday in May which shall be in the year of our Lord one thousand six hundred ninety and three and until other counsellors or assistants shall be chosen and appointed in their stead in such manner as in these presents is expressed. And we do further by these presents constitute and appoint our trusty and well beloved Isaac Addington, Esq., to be our first and present secretary of our said province during our pleasure. And our will and pleasure is that the governor of our said province for the time being shall have authority from time to time at his discretion to assemble and call together the counsellors or assistants of our said province for the time being: And that the said governor with the said assistants or counsellors or seven of them at the least shall and may from time to time hold and keep a council for the ordering and directing the affairs of our said province. And further we will and by these presents, for us, our heirs and successors, do ordain and grant that there shall and may be convened, held and kept by the governor for the time being upon every last Wednesday in the month of May every year for ever, and at all such other times as the governor of our said province shall think fit and appoint a great and general court or assembly; which said great and general court or assembly shall consist of the governor and council or assistants for the time being, and of such freeholders of our said province or territory as shall be from time to time elected or deputed by the major part of the freeholders and other inhabitants of the respective towns or places who shall be present at such elections; each of the said towns and places being hereby empowered to elect and depute two persons and no more to

serve for and represent them respectively in the said great and general court or assembly. To which great and general court or assembly to be held as aforesaid we do hereby for us, our heirs and successors, give and grant full power and authority from time to time to direct, appoint and declare what number each county, town and place shall elect and depute to serve for and represent them respectively in the said great and general court or assembly. Provided always that no freeholder or other person shall have a vote in the election of members to serve in any great or general court or assembly to be held as aforesaid, who at the time of such election shall not have an estate of freehold in land within our said province or territory to the value of forty shillings per annum at the least: or other estate to the value of forty pounds sterling: and that every person who shall be so elected shall before he sit or act in the said great and general court or assembly take the oaths mentioned in an act of parliament made in the first year of our reign entitled, An act for abrogating of the oaths of allegiance and supremacy, and appointing other oaths and thereby appointed to be taken instead of the oaths of allegiance and supremacy: and shall make, repeat and subscribe the declaration mentioned in the said act before the governor or lieutenant or deputy governor or any two of the assistants for the time being who shall be thereunto authorized and appointed by our said governor. And that the governor for the time being shall have full power and authority from time to time as he shall judge necessary to adjourn, prorogue and dissolve all great and general courts or assemblies met and convened as aforesaid. And our will and pleasure is and we do hereby for us, our heirs and successors, grant, establish and ordain that yearly once in every year forever hereafter the aforesaid number of eight and twenty counsellors or assistants shall be by the general court or assembly newly chosen; that is to say, eighteen at least of the inhabitants of, or proprietors of, lands within the territory formerly called the Colony of the Massachusetts Bay; and four at the least of the in-

habitants of, or proprietors of, lands within the territory formerly called New Plymouth; and three at the least of the inhabitants of, or proprietors of, land within the territory formerly called the Province of Main; and one at the least of the inhabitants of, or proprietors of, land within the territory lying between the river of Sagadahock and Nova Scotia; and that the said counsellors or assistants or any of them shall or may at any time hereafter be removed or displaced from their respective places or trust of counsellors or assistants by any great or general court or assembly; and that if any of the said counsellors or assistants shall happen to die or be removed as aforesaid before the general day of election, that then and in every such case the great and general court or assembly at their first sitting may proceed to a new election of one or more counsellors or assistants in the room or place of such counsellors or assistants so dying or removed. And we do further grant and ordain that it shall and may be lawful for the said governor, with the advice and consent of the council or assistants, from time to time to nominate and appoint judges, commissioners of oyer and terminer, sheriffs, provosts, marshals, justices of the peace and other officers, to our council and courts of justice belonging: Provided always that no such nomination or appointment of officers be made without notice first given or summons issued out seven days before such nomination or appointment unto such of the said counsellors or assistants as shall be at that time residing within our said province. And our will and pleasure is that the governor and lieutenant or deputy governor and counsellors and assistants for the time being, and all other officers to be appointed or chosen as aforesaid shall before the undertaking the execution of their offices and places respectively take their several and respective oaths for the due and faithful performance of their duties in their several and respective offices and places; and also the oaths appointed by the said act of parliament made in the first year of our reign to be taken instead of the oaths of allegiance

and supremacy; and shall make, repeat and subscribe the declaration mentioned in the said act before such person or persons as are by these presents hereinafter appointed: (that is to say) the governor of our said province or territory for the time being shall take the said oaths and make, repeat and subscribe the said declaration before the lieutenant or deputy governor, or in his absence before any two or more of the said persons hereby nominated and appointed the present counsellors or assistants of our said province or territory, to whom we do by these presents give full power and authority to give and administer the same to our said governor accordingly. And after our said governor shall be sworn and shall have subscribed the said declaration that then our lieutenant or deputy governor for the time being and the counsellors or assistants before by these presents nominated and appointed shall take the said oaths and make, repeat and subscribe the said declaration before our said governor; and that every such person or persons as shall (at any time of the annual elections or otherwise upon death or removal) be appointed to be the new counsellors or assistants, and all other officers to be hereafter chosen from time to time shall take the oaths to their respective offices and places belonging; and also the said oaths appointed by the said act of parliament to be taken instead of the oaths of allegiance and supremacy; and shall make, repeat and subscribe the declaration mentioned in the said act before the governor, or lieutenant or deputy governor or any two or more counsellors or assistants; or such other person or persons as shall be appointed thereunto by the governor for the time being; to whom we do therefore by these presents give full power and authority from time to time to give and administer the same respectively according to our true meaning hereinbefore declared without any commission or further warrant to be had and obtained from us, our heirs and successors, in that behalf. And our will and pleasure is, and we do hereby require and command that all and any person and persons hereafter by us, our heirs and successors,

nominated and appointed to the respective offices of governor or lieutenant or deputy governor and secretary of our said province or territory (which said governor or lieutenant or deputy governor and secretary of our said province or territory for the time being we do hereby reserve full power and authority to us, our heirs and successors to nominate and appoint accordingly) shall, before he or they be admitted to the execution of their respective offices, take as well the oath for the due and faithful performance of the said offices respectively as also the oaths appointed by the said act of parliament made in the said first year of our reign, to be taken instead of the said oaths of allegiance and supremacy; and shall also make, repeat and subscribe the declaration appointed by the said act in such manner and before such persons as aforesaid. And further our will and pleasure is, and we do hereby for us, our heirs and successors, grant, establish and ordain that all and every of the subjects of us, our heirs and successors, which shall go to and inhabit within our said province and territory, and every of their children which shall happen to be born there or on the seas, in going thither or returning from thence, shall have and enjoy all liberties and immunities of free and natural subjects within any of the dominions of us, our heirs and successors to all intents, constructions and purposes whatsoever, as if they and every of them were born within this our realm of England. And for the greater ease and encouragement of our loving subjects inhabiting our said province or territory of the Massachusetts Bay and of such as shall come to inhabit there, we do by these presents, for us, our heirs and successors, grant, establish and ordain that forever hereafter there shall be a liberty of conscience allowed in the worship of God to all Christians (except papists) inhabiting, or which shall inhabit or be resident within our said province or territory. And we do hereby grant and ordain that the governor or lieutenant or deputy governor of our said province or territory, for the time being, or either of them, or any two or more of the council or as-

sistants for the time being as shall be thereunto appointed by the said governor, shall and may at all times, and from time to time hereafter, have full power and authority to administer and give the oaths appointed by the said act of parliament made in the first year of our reign to be taken instead of the oaths of allegiance and supremacy to all and every person and persons which are now inhabiting or residing within our said province or territory, or which shall at any time or times hereafter, go or pass thither. And we do of our further grace, certain knowledge and mere motion grant, establish and ordain for us, our heirs and successors that the great and general court or assembly of our said province or territory for the time being convened as aforesaid, shall forever have full power and authority to erect and constitute judicatories and courts of record or other courts to be held in the name of us, our heirs and successors, for the hearing, trying and determining of all manner of crimes, offences, pleas, processes, complaints, actions, matters, causes and things whatsoever arising or happening within our said province or territory, or between persons inhabiting or residing there, whether the same be criminal or civil, and whether the said crimes be capital or not capital, and whether the said pleas be real, personal or mixt, and for the awarding and making out of execution thereupon: To which courts and judicatories we do hereby for us, our heirs and successors give and grant full power and authority from time to time to administer oaths for the better discovery of truth in any matter in controversy or defending before them. And we do for us, our heirs and successors, grant, establish and ordain that the governor of our said province or territory for the time being, with the council or assistants may do, execute or perform all that is necessary for the probate of wills and granting of administrations for, touching or concerning any interests or estate which any person or persons shall have within our said province or territory: And whereas we judge it necessary that all our subjects should have liberty to appeal to us, our heirs and

successors in cases that may deserve the same, we do by these presents ordain that in case either party shall not rest satisfied with the judgment or sentence of any judicatories or courts within our said province or territory, in any personal action wherein the matter in difference doth exceed the value of three hundred pounds sterling, that then he or they may appeal to us, our heirs and successors in our or their privy council. Provided such appeal be made within fourteen days after the sentence or judgment given; and that before such appeal be allowed, security be given by the party or parties appealing in the value of the matter in difference, to pay or answer the debt or damages, for the which judgment or sentence is given with such costs and damages as shall be awarded by us, our heirs or successors, in case the judgment or sentence be affirmed: And provided also that no execution shall be staid or suspended by reason of such appeal unto us, our heirs and successors, in our or their privy council, so as the party suing or taking out execution do in the like manner give security to the value of the matter in difference to make restitution in case the said judgment or sentence be reversed or annulled upon the said appeal. And we do further, for us, our heirs and successors, give and grant to the said governor and the great and general court or assembly of our said province or territory for the time being, full power and authority, from time to time, to make, ordain and establish all manner of wholesome and reasonable orders, laws, statutes and ordinances, directions and instructions, either with penalties or without (so as the same be not repugnant or contrary to the laws of this our realm of England), as they shall judge to be for the good and welfare of our said province or territory, and for the government and ordering thereof, and of the people inhabiting, or who shall inhabit the same, and for the necessary support and defence of the government thereof. And we do, for us, our heirs and successors, give and grant that the said general court or assembly shall have full power and authority to name and settle annually all such officers

within the said province, such officers excepted, the election and constitution of whom we have by these presents reserved to us, our heirs and successors, or to the governor of our said province for the time being; and to set forth the several duties, powers and limits of every such officer to be appointed by the said general court or assembly; and the forms of such oaths not repugnant to the laws and statutes of this our realm of England, as shall be respectively administered unto them for the execution of their several offices and places; and also to impose fines, mulcts, imprisonments and other punishments; and to impose and levy proportionable and reasonable assessments, rates and taxes upon the estates and persons of all and every the proprietors and inhabitants of our said province or territory, to be issued and disposed of by warrant under the hand of the governor of our said province for the time being with the advice and consent of the council for our service in the necessary defence and support of our government of our said province or territory, and the protection and preservation of the inhabitants there, according to such acts as are or shall be in force within our said province; and to dispose of matters and things whereby our subjects, inhabitants of our said province, may be religiously, peaceably and civilly governed, protected and defended; so as their good life and orderly conversation may win the Indian natives of the country to the knowledge and obedience of the only true God and Saviour of mankind and the Christian faith, which his royal majesty, our royal grandfather King Charles the first, in his said letters patent declared was his royal intention and the adventurers' free confession to be the principal end of the said plantation. And for the better securing and maintaining liberty of conscience hereby granted to all persons at any time being and residing within our said province or territory as aforesaid, willing, commanding and requiring and by these presents for us, our heirs and successors, ordaining and appointing that all such orders, laws, statutes and ordinances, instructions and directions as shall

be so made and published under our seal of our said province or territory shall be carefully and duly observed, kept and performed and put in execution according to the true intent and meaning of these presents. Provided always; and we do by these presents for us, our heirs and successors, establish and ordain that in the framing and passing of all such orders, laws, statutes and ordinances and in all elections and acts of government whatsoever, to be passed, made or done by the said general court or assembly or in council, the governor of our said province or territory of the Massachusetts Bay in New England for the time being shall have the negative voice; and that without his consent or approbation signified and declared in writing, no such orders, laws, statutes, ordinances, elections or other acts of government whatsoever, so to be made, passed or done by the said general assembly or in council shall be of any force, effect or validity; anything herein contained to the contrary in any wise notwithstanding. And we do, for us, our heirs and successors, establish and ordain that the said orders, laws, statutes and ordinances be by the first opportunity after the making thereof sent or transmitted unto us, our heirs and successors, under the public seal to be appointed by us, for our or their approbation or disallowance. And that in case all or any of them shall at any time within the space of three years next after the same shall have been presented to us, our heirs and successors, in our or their privy council, be disallowed and rejected and so signified by us, our heirs and successors, under our or their sign manual and signet, or by or in our or their privy council unto the governor for the time being, then such and so many of them as shall be so disallowed and rejected shall thenceforth cease and determine and become utterly void and of none effect. Provided always that in case we, our heirs or successors shall not within the term of three years after the presenting of such orders, laws, statutes or ordinances as aforesaid signify our or their disallowance of the same, then the said orders, laws, statutes or ordinances shall be and continue in full force

and effect according to the true intent and meaning of the same, until the expiration thereof, or that the same shall be repealed by the general assembly of our said province for the time being. Provided also that it shall and may be lawful for the said governor and general assembly to make or pass any grant of lands lying within the bounds of the colonies formerly called the colonies of the Massachusetts Bay and New Plymouth and province of Main in such manner as heretofore they might have done by virtue of any former charter or letters patent; which grants of lands within the bounds aforesaid we do hereby will and ordain to be and continue for ever of full force and effect without our further approbation or consent. And so as nevertheless, and it is our royal will and pleasure that no grant or grants of any lands lying or extending from the river of Sagadahock to the Gulf of St. Lawrence and Canada rivers and to the main sea northward and eastward to be made or passed by the governor and general assembly of our said province, be of any force, validity or effect until we, our heirs or successors shall have signified our or their approbation of the same. And we do by these presents for us, our heirs and successors, grant, establish and ordain that the governor of our said province or territory for the time being shall have full power by himself or by any chief commander or other officer or officers to be appointed by him from time to time to train, instruct, exercise and govern the militia there; and for the special defence and safety of our said province or territory to assemble in martial array and put in warlike posture the inhabitants of our said province or territory, and to lead and conduct them, and with them to encounter, expulse, repel, resist and pursue by force of arms as well by sea as by land, within or without the limits of our said province or territory, and also to kill, slay, destroy and conquer by all fitting ways, enterprises and means whatsoever all and every such person and persons as shall at any time hereafter attempt or enterprise the destruction, invasion, detriment or annoyance of our said province or

territory; and to use and exercise the law martial in time of actual war, invasion or rebellion as occasion shall necessarily require; and also from time to time to erect forts and to fortify any place or places within our said province or territory and the same to furnish with all necessary ammunition, provisions and stores of war for offence or defence, and to commit from time to time the custody and government of the same to such person or persons as to him shall seem meet; and the said forts and fortifications to demolish at his pleasure, and to take and surprise by all ways and means whatsoever all and every such person or persons, with their ships, arms, ammunition and other goods as shall in a hostile manner invade or attempt the invading, conquering or annoying of our said province or territory. Provided always and we do by these presents for us, our heirs and successors, grant, establish and ordain that the said governor shall not at any time hereafter, by virtue of any power hereby granted or hereafter to be granted to him, transport any of the inhabitants of our said province or territory or oblige them to march out of the limits of the same without their free and voluntary consent or the consent of the great and general court or assembly of our said province or territory; nor grant commissions for exercising the law martial upon any the inhabitants of our said province or territory without the advice and consent of the council or assistants of the same. Provided in like manner and we do by these presents for us, our heirs and successors, constitute and ordain that when and as often as the governor of our said province for the time being, shall happen to die or be displaced by us, our heirs and successors, or be absent from his government; that then and in any of the said cases the lieutenant or deputy governor of our said province for the time being shall have full power and authority to do and execute all and every such acts, matters and things which our governor of our said province for the time being might or could by virtue of these our letters patent lawfully do or execute if he were personally present, until the return of the governor so

absent, or the arrival or constitution of such other governor as shall or may be appointed by us, our heirs or successors, in his stead : And that when and as often as the governor and lieutenant or deputy governor of our said province or territory for the time being shall happen to die or be displaced by us, our heirs or successors or be absent from our said province ; and that there shall be no person within the said province commissioned by us, our heirs or successors to be governor within the same ; then and in every of the said cases the council or assistants of our said province shall have full power and authority, and we do hereby give and grant unto the said council or assistants of our said province for the time being, or the major part of them, full power and authority to do and execute all and every such acts, matters and things which the said governor or lieutenant or deputy governor of our said province or territory for the time being might or could lawfully do or exercise, if they or either of them were personally present until the return of the governor, lieutenant or deputy governor as shall and may be appointed by us, our heirs and successors from time to time. Provided always and it is hereby declared that nothing herein shall extend or be taken to erect or grant or allow the exercise of any admiral court jurisdiction, power or authority, but that the same shall be and is hereby reserved to us and our successors, and shall from time to time be erected, granted and exercised by virtue of commissions to be issued under the great seal of England or under the seal of the high admiral, or the commissioners for executing the office of high admiral of England. And further our express will and pleasure is, and we do by these presents for us, our heirs and successors, ordain and appoint that these our letters patent shall not in any manner enure or be taken to abridge, bar or hinder any of our loving subjects whatsoever to use and exercise the trade of fishing upon the coasts of New England, but that they and every of them shall have full and free power and liberty to continue and use their said trade of fishing upon the said coast in any of

the seas thereunto adjoining, or any arms of the said seas or salt water rivers where they have been wont to fish; and to build and set upon the lands within our said province or colony lying waste and not then possessed by particular proprietors such wharves, stages and work houses as shall be necessary for the salting, drying, keeping and packing of their fish to be taken or gotten upon that coast; and to cut down and take such trees and other materials there growing or being upon any parts or places lying waste, and not then in possession of particular proprietors, as shall be needful for that purpose and for all other necessary easements, helps and advantages concerning the trade of fishing there in such manner and form as they have been heretofore at any time accustomed to do without making any wilful waste or spoil; anything in these presents contained to the contrary notwithstanding. And lastly for the better providing and furnishing of masts for our royal navy, we do hereby reserve to us, our heirs and successors all trees of the diameter of twenty-four inches and upwards of twelve inches from the ground growing upon any soil or tract of land within our said province or territory not heretofore granted to any private persons: And we do restrain and forbid all persons whatsoever from felling, cutting or destroying any such trees without the royal license of us, our heirs and successors first had and obtained, upon penalty of forfeiting one hundred pounds sterling unto us, our heirs and successors for every such tree so felled, cut or destroyed without such license had or obtained in that behalf, anything in these presents contained to the contrary in anywise notwithstanding.

In witness whereof we have caused these our letters to be made patent. Witness ourselves at Westminster, the seventh day of October, in the third year of our reign.

By writ of privy seal.

PIGOT.

APPENDIX

F.

EXPLANATORY CHARTER.

George by the grace of God, of Great Britain, France and Ireland, King, defender of the faith, &c. To all to whom these presents shall come, greeting : Whereas our late royal predecessors William and Mary, King and Queen of England, &c., did by their letters patent under their great seal of England bearing date at Westminster, the seventh of October in the third year of their reign for themselves, their heirs and successors unite, erect and incorporate the territories and colonies commonly called or known by the names of the colony of the Massachusetts Bay and colony of New Plymouth, the Province of Main, the territory called Accada or Nova Scotia, and all that tract of land lying between the said territories of Nova Scotia and the said province of Main, into one real province by the name of our province of the Massachusetts Bay in New England. And whereas their said late majesties King William and Queen Mary did by their said recited letters patent (amongst other things therein contained) for themselves, their heirs and successors, ordain and grant that there should and might be convened, held and kept by the governor for the time being upon every last Wednesday in the month of May every year for ever, and at all such other times as the governor of their said province should think fit and appoint a great and general court or assembly ; which said great and general court or assembly should consist of the governor and council, or assistants for the time being and of such freeholders of their said province or territories as should be from time to time elected or deputed by the major part of the freeholders and other inhabitants of

the respective towns or places, who should be present at such elections : each of the said towns and places being thereby empowered to elect and depute two persons and no more, to serve for and represent them respectively in the said great and general court or assembly, and that the governor for the time being should have full power and authority, from time to time as he should judge necessary to adjourn, prorogue and dissolve all great and general courts or assemblies met and convened as aforesaid : And did thereby also for themselves, their heirs and successors provide, establish and ordain, that in the framing and passing of all orders, laws, statutes and ordinances, and in all elections and acts of government whatsoever, to be passed, made or done by the said general court or assembly or in council, the governor of the said province or territory of the Massachusetts Bay in New England, for the time being should have the negative voice, and that without his consent or approbation, signified and declared in writing, no such orders, laws, statutes, ordinances, elections, or other acts of government whatsoever so to be made, passed or done by the said general assembly or in council, should be of any force, effect or validity, anything therein contained to the contrary in any wise notwithstanding ; as in and by the said letters patent (relation being thereunto had) may more fully and at large appear.

And whereas no provision is made by the said recited letters patent, touching the nomination and election of a speaker of the representatives assembled in any great and general court of our said province nor any particular reservation made of the right of us, our heirs and successors to approve or disapprove of such speaker by the governor of the said province appointed or to be appointed by us or them for the time being ; and no power is granted by the said recited letters patent to the said house of representatives to adjourn themselves for any time whatsoever ; by means whereof divers doubts and controversies have arisen within our said province to the interruption of the public business thereof, and the obstruction of our service ; know ye therefore that

for removing the said doubts and controversies, and preventing the like mischiefs for the future; and also for the further explanation of the said recited letters patent, we of our especial grace, certain knowledge, and mere motion, have granted, ordained and appointed, and by these presents for us, our heirs and successors do will, grant, ordain and appoint, that forever hereafter, the representatives assembled in any great or general court of our said province to be hereafter summoned, shall upon the first day of their assembling, elect a fit person out of the said representatives, in such general court; and that the person so elected shall from time to time be presented to the governor of our said province for the time being, or in his absence to the lieutenant governor, or commander in chief of our said province for the time being, for his approbation; to which governor, lieutenant governor and commander respectively we do hereby for us, our heirs and successors, give full power and authority to approve or disapprove of the person so elected and presented, which approbation or disapprobation shall be signified by him by message in writing under his hand to the said house of representatives; and in case such governor, lieutenant governor or commander in chief shall disapprove of the person so elected and presented, or the person so elected and presented being approved as aforesaid shall happen to die, or by sickness or otherwise be disabled from officiating as speaker, in every such case, the said representatives so assembled shall forthwith elect another person to be speaker of the house of representatives to be presented and approved or disapproved in manner as aforesaid, and so from time to time as often as the person so elected and presented shall be disapproved of or happen to die, or become disabled as aforesaid.

And our further will and pleasure is, and we do by these presents of our more abundant grace for us, our heirs and successors grant, ordain and appoint, that it shall and may be lawful to and for the representatives assembled in any great or general court of our said province for the time being,

for ever hereafter to adjourn themselves from day to day (and if occasion shall require) for the space of two days; but not for any longer time, than for the space of two days without leave from the governor, or in his absence from the lieutenant governor, or commander in chief of our said province for the time being first had and obtained in that behalf, anything in the said recited letters patent contained to the contrary thereof in anywise notwithstanding.

Provided always, that nothing in these presents contained shall extend, or be construed to extend, to revoke, alter or prejudice the power and authority by the said recited letters patent granted to the governor of the said province for the time being to adjourn, prorogue and dissolve all great and general courts or assemblies of said province.

And lastly, we do by these presents, for us, our heirs and successors, grant that these our letters patent, or the enrolment, or exemplification thereof, shall be in and by all things good, firm, valid and effectual in the law according to the true intent and meaning thereof notwithstanding the not rightly, or fully reciting, mentioning or describing the said recited letters patent, or the date thereof or any other omission, imperfection, defect, matter, cause or thing whatsoever to the contrary thereof in anywise notwithstanding.

In witness whereof, we have caused these our letters to be made patent, witness, William Archbishop of Canterbury, and the rest of the guardians and justices of the Kingdom at Westminster, the six and twentieth day of August, in the twelfth year of our reign.

By writ of privy seal.

Cocks.

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